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code of federal regulations

Wildlife and Fisheries

50

PART 600 TO END
Revised as of October 1, 1988

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Wildlife and Fisheries

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PART 600 TO END

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1934

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1988

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

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To cite the regulations in this volume use title, part and section number. Thus, 50 CFR 601.1 *refers to Title 50, Part 601, section 1.*

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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JOHN E. BYRNE,
Director,
Office of the Federal Register.

October 1, 1988

THIS TITLE

Title 50—FISH AND WILDLIFE is composed of three volumes. The parts in these volumes are arranged in the following order: Parts 1-199, Parts 200-599 and Part 600 to end. The first volume (Parts 1 to 199) contains the current regulations issued under Chapter I—United States Fish and Wildlife Service. The second volume (Parts 200 to 599) contains the current regulations issued under Chapter II—National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce; Chapter III—International Regulatory Agencies (Fishing and Whaling); Chapter IV—Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations; and Chapter V—Marine Mammal Commission. The third volume (Part 600 to end) contains the current regulations issued under Chapter VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce. The contents of these volumes represent all current regulations codified under this title of the CFR as of October 1, 1988.

Alphabetical listings of endangered and threatened wildlife and plants appear in Part 17.

The OMB control numbers for the National Oceanic and Atmospheric Administration appear in § 204.1 of Chapter II. For the convenience of the user, § 204.1 is reprinted in the Finding Aids section of this volume.

For this volume Beverly Fayson was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Ruth C. Pontius.

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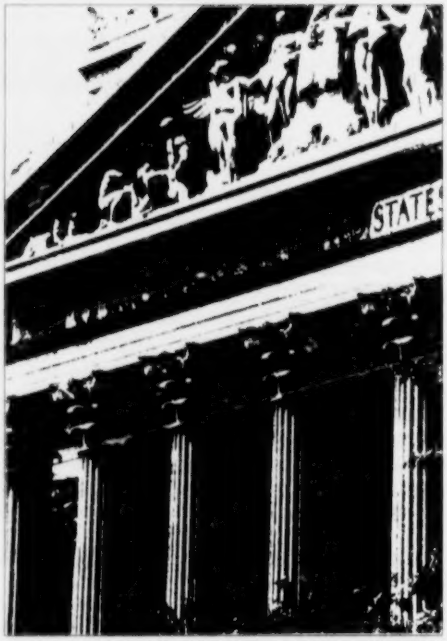

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Title 50—Wildlife and Fisheries

(This book contains Part 600 to end)

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CROSS REFERENCES: Commercial fishing on Red Lake Indian Reservation, Bureau of Indian Affairs: 25 CFR Part 242.

Disposal of certain wild animals in national parks, National Park Service: 36 CFR Part 10.

Exchanges of land for migratory bird or other wildlife refuges, Bureau of Land Management: 43 CFR 2200.0-1—2272.1.

Fishing, hunting, trapping, and protection of wildlife in national forests and wildlife refuges, Forest Service: 36 CFR Part 241, §§ 261.8, 261.9.

Fishing, hunting, trapping, and protection of wildlife in national parks, memorials, recreation areas, etc., National Park Service: 36 CFR Parts 2, 7, 20.

Fishing and hunting in reservoir areas, Corps of Engineers: 36 CFR 327.8.

Free entry of animals, birds and products of American fisheries under specified conditions, Customs Service: 19 CFR 10.70—10.83.

Grazing areas for wildlife maintenance, Bureau of Land Management: 43 CFR Part 4110.

Making pictures, television production, or sound tracks on areas administered by the United States Fish and Wildlife Service or the National Park Service: 43 CFR 5.1.

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

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PART 601—REGIONAL FISHERY MANAGEMENT COUNCILS

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601.1 Purpose.
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Subpart B—Geographical Boundaries

601.11 General.
601.12 Intercouncil boundaries.

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601.21 General.
601.22 Organization.
601.23 Administrative practices and procedures.
601.24 Operational practices and procedures.
601.25 Council statement of organization, practices and procedures.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

Subpart A—General

§ 601.1 Purpose.

The regulations in this part implement certain portions of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson Act), which, among other things, establishes eight Regional Fishery Management Councils (Councils). The principal responsibilities of these councils are to provide the nucleus of a national fishery conservation and management program through the systematic development of fishery management plans and amendments to such plans, to submit periodic and other reports to the Secretary, to continually review and revise assessments as to optimum yield and the total allowable level of foreign fishing, and to conduct other necessary and appropriate activities with respect to the conservation and management of the fisheries within their geographical area of concern. The Councils act as independent bodies, whose actions must conform to the uniform standards established by Part 601. Part 601 describes matters pertaining to the establishment, organization, practices, and procedures of the Councils.

[42 FR 34452, July 5, 1977, as amended at 48 FR 56591, Dec. 22, 1983]

§ 601.2 Definitions.

The terms used in these regulations shall have the meanings that are prescribed in section 3 of the Act. In addition, the following definitions apply:

(a) *Administrative and technical support services.* The administrative, technical, legal, and scientific services needed by the Councils, authorized by the Secretary, and provided by the government to assist the Councils in the fulfillment of their various functions required by the Act.

(b) *Administrator.* The Administrator of the National Oceanic and Atmospheric Administration.

(c) *Advisory group.* The Scientific and Statistical Committees or advisory panels established under the Act.

(d) *Associate Administrator.* The Associate Administrator for Marine Resources, National Oceanic and Atmospheric Administration.

(e) *Confidential.* Confidential means containing information, the unauthorized disclosure of which could be prejudicial or harmful. Depending on the context within which it is used, the word:

(1) Identifies information having an official security classification of Confidential or higher relating to the protection of national security, or (2) describes information/data that is identifiable with an individual, business, or some other entity and that is accepted from any person by the Secretary under a stipulation that limits disclosure.

(f) *Council.* Regional Fishery Management Council.

(g) *Director.* The Director of the National Marine Fisheries Service.

(h) *Federal budget cycle.* The 33-month process of formulating and executing the Federal budget.

(i) *Fishery management plan.* A document that contains a systematic description of a given fishery and that sets forth the objectives and strategies for the management of the fishery.

(j) *Highly migratory species.* The following, among others, are considered highly migratory species for the purposes of the Act:

TUNA

Albacore, *Thunnus alalunga;*
Bigeye tuna, *Thunnus obesus;*
Bluefin tuna, *Thunnus thynnus;*
Southern bluefin tuna, *Thunnus maccoyii;*
Yellowfin tuna, *Thunnus albacares;* and
Skipjack tuna, *Euthynnus pelamis.*

(k) *Regional Director.* The Regional representatives of the Director. There are five regional offices of the National Marine Fisheries Service whose Regional Directors serve on the various Councils as specified by the Act.

[42 FR 34452, July 5, 1977, as amended at 42 FR 36980, July 18, 1977; 48 FR 56591, Dec. 22, 1983]

Subpart B—Geographical Boundaries

§ 601.11 General.

(a) *Fishery conservation zone.* The Act creates a zone contiguous to the territorial sea, which is called the fishery conservation zone. The outer boundary of the zone is 200 nautical miles from the baseline from which the territorial sea is measured and the inner boundary is a line coterminous with the seaward boundary of each of the coastal States. (See 43 U.S.C. 1301(b) and 1312 for definition of "seaward boundary".)

(b) *Scope.* (1) The boundaries described in § 601.12 delineate the geographical area of authority of adjacent Council within this fishery conservation zone.

(2) Within the geographical area of authority, each Council shall develop fishery management plans for each fishery involving the following categories of fishery resources:

(i) All fish within this zone, except "highly migratory species";

(ii) All anadromous species throughout their migratory range, except within a conservation zone recognized by the United States; and

(iii) Continental Shelf fishery resources.

(c) *Jurisdiction*—(1) *State.* Generally the Act does not diminish the fishery jurisdiction of any State within its own boundaries, nor does it extend State fishery jurisdiction beyond a State's seaward boundary.

(2) *Intercouncil.* In any case in which the range of stock or a fishery extends beyond the geographical area of authority of any one Council, as defined in § 601.12, the Secretary is authorized to designate the Council that shall prepare the fishery management plan for such a fishery, after consultation with the Councils concerned. When such a plan includes waters adjacent to the States represented on more than one Council, the Council thus designated should consult with the other affected Council(s). The Secretary may require that a plan be prepared jointly by the Councils concerned. In this case, any plan or amendment must, before being submitted to the Secretary, shall be approved by a majority of the voting members, present and voting, of each participating Council.

[42 FR 34452, July 5, 1977]

§ 601.12 Intercouncil boundaries.

(a) *New England and Mid-Atlantic Fishery Management Councils*—(1) *Description.* The boundary commences at the intersection point of Connecticut, Rhode Island and New York at 41°18′16.249″ latitude and 71°54′28.477″ longitude and proceeds S 37°22′32.75″ E to the points of intersection with the outward boundary of the fishery conservation zone as specified in Title I, section 101 and Title II, section 202(d) of the Act.

(2) *Method of determination.* The boundary between the New England and Mid-Atlantic Councils continues the agreed state boundary between New York and Rhode Island (to which Congress granted consent on July 1, 1944, Pub. L. 78-399) seaward to the 200 mile boundary of the fishery conservation zone.

(b) *Mid-Atlantic and South Atlantic Fishery Management Councils*—(1) *Description.* The boundary commences at the seaward boundary between the States of Virginia and North Carolina, and proceeds due East to the point of intersection with the outward boundary of the fishery conservation zone as specified in Title I, section 101 and Title II, section 202(d) of the Act.

(2) *Methods of determinations.* The boundary between the Mid-Atlantic and South Atlantic Councils continues the agreed State boundary between

Virginia and North Carolina seaward to the 200-mile boundary of the fishery conservation zone and, when drawn, would be a line of constant latitude described as 36°33′00.8″ N.

(c) *South Atlantic and Gulf of Mexico Fishery Management Councils*—(1) *Description.* The boundary between the Gulf of Mexico and the Atlantic Ocean begins at the intersection of the outer boundary of the FCZ and the eighty-third meridian west of Greenwich (83° W. longitude), proceeds northward along that meridian to 24°35′ N. latitude (near the Dry Tortugas Islands), thence eastward along that parallel of latitude, through Rebecca Shoal and the Quicksand Shoal, to the Marquesas Keys, and then through the Florida Keys to the mainland at the eastern end of Florida Bay, the line so running that the narrow waters within the Dry Tortugas Islands, the Marquesas Keys and the Florida Keys, and between the Florida Keys and the mainland, are within the Gulf of Mexico.

(2) *Method of determination.* The boundary between the Gulf of Mexico and South Atlantic Councils reflects the determination in *United States* v. *Florida*, 425 U.S. 791 (1976), regarding the line of demarcation between the Atlantic Ocean and the Gulf of Mexico.

[42 FR 36980, July 18, 1977, as amended at 49 FR 30203, July 27, 1984]

Subpart C—Uniform Standards for Organization, Practices and Procedures

§ 601.21 General.

(a) *Purpose.* Section 302(f)(6) of the Act requires each Council to determine its own organization, practices and procedures for carrying out its functions in accordance with such Uniform Standards as are prescribed by the Secretary. The regulations contained in this subpart provide the Uniform Standards in accordance with which the Councils shall operate.

(b) *Applicability of other laws*—(1) *National Environmental Policy Act of 1969 (42 U.S.C. 4321).* The National Environmental Policy Act (NEPA) sets forth the strategy of the Congress to achieve coordination of Federal activities and environmental considerations. NEPA's basic purpose is to insure that, in addition to technical and economic considerations, Federal officials weigh and give appropriate consideration to unquantified environmental values in policy formulation, decisionmaking and administrative actions. Section 102(2)(C) of NEPA requires preparation of a detailed environmental impact statement in the case of major Federal actions that significantly affect the quality of the human environment. Procedures for compliance with NEPA in the preparation and submission of fishery management plans and amendments to such plans are set forth in § 602.6 [Reserved].

(2) Provisions of two interrelated laws affect Council practices and procedures concerning public access to government records. These laws are—

(i) *The Freedom of Information Act (5 U.S.C. 552(b)).* The Freedom of Information Act (FOIA) provides for public access to records of the executive branch of the Federal Government, and to records generated at the request of the Federal Government. Nine groups of exceptions are provided that allow the withholding of information. Application of FOIA is covered more specifically in Part 603.

(ii) *The Privacy Act (5 U.S.C. 552 (a)).* This Act provides to individuals certain rights of access to records kept about them, and at the same time requires that the confidentiality and use of the information be strictly regulated, placing restrictions on the collection, retention, and use of personal information. Specific application of this Act is found in Part 603.

(3) *Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.).* The principal objective of this Act is to encourage and assist States in developing coastal zone management programs, to coordinate State activities, and to safeguard the regional and national interests in the coastal zone. While the coastal zone does not extend beyond the territorial sea, activities taking place beyond the territorial sea may impact on the coastal zone and thus come within the influence of coastal zone planning. In the preparation of fishery management

plans, Councils should be particularly cognizant of the provisions of section 307(c) of this Act that require that any Federal activity directly affecting the coastal zone of a State be consistent with that State's approved coastal zone management program. Thus, Councils will need to coordinate their planning actions with the appropriate State agencies involved in coastal zone program development.

[42 FR 34452, July 5, 1977, as amended at 48 FR 56589, Dec. 22, 1983]

§ 601.22 Organization.

(a) *General.* This part addresses such questions as organization of the Council members, administrative staff and advisory panels.

(b) *Council members.* The Councils consist of voting and nonvoting members or their designees, as specified in the Act.

(1) *Terms.* Members appointed following initial constitution of the Councils serve for a term of three years. An individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term. The anniversary date for measuring terms of membership is August 11.

(2) *Designees.* (i) The Act authorizes the principal State officials, the NMFS Regional Directors, and the nonvoting members to designate individuals to attend Council meetings in their absence. Only one designee per Council may be so specified by each of the above officials.

(ii) A designee may serve for all or part of a Council meeting in the absence of the individual he or she is replacing and has the same voting power as his or her designator.

(iii) If circumstances require, the Council member may change his or her designee. In such case, the Chairman of the Council must be notified and given in writing, in advance of the meeting at which the designee will represent the Council member, the name, address, and position of the individual designated. A designee may not name a designee for himself or herself.

(iv) Designees without appropriate security clearance may not attend meetings closed for security reasons, nor handle classified material. (See § 601.23(e)(3).)

(v) Reimbursement of actual expenses and compensation, as described in § 601.23(f), associated with travel to any meeting shall be limited to the member, or, in the case of the absence of the member, one designee. A designee who serves for part of a Council meeting may receive reimbursement of actual expenses and compensation associated with necessary travel and attendance at that part of a Council meeting wherein the member is absent.

(3) *Designation of regional directors.* The Regional Directors, NMFS shall, in accordance with the Act, serve as voting members on the Councils as follows:

Council	Regional Director
New England	Northeast region
Mid-Atlantic	Do
South Atlantic	Southeast region
Caribbean	Do
Gulf of Mexico	Do
Pacific	Northwest region
North Pacific	Alaska region
Western Pacific	Southwest region

(4) *Appointments.* (i) Inasmuch as each year approximately one-third of a Council's appointed membership will lapse, new members will be appointed by the Secretary or the Secretary's delegate from lists of nominees submitted by the Governors of each applicable constituent state by March 15 of each year. The Governors are responsible for determining that their nominees meet the qualification requirements of the Magnuson Act and for providing appropriate documentation for the Secretary or the Secretary's delegate to make a reasoned choice. If the Secretary or the Secretary's delegate determines that an individual is not qualified, the Secretary or the Secretary's delegate will notify the appropriate Governor of that determination. The Governor will then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the nominee in question.

(ii) There are two categories of seats for which appointed voting members may be eligible: "obligatory" and "at-large." Each Council constituent State has one obligatory seat. When the term of an obligatory State member expires, the Governor of that State is required to submit at least three nominations from which the selection of a replacement will be made by the Secretary or the Secretary's delegate. When the term of an at-large State member expires, the Governor of each member State of a Council shall submit at least three nominations for each vacancy, and the selection will be made by the Secretary or the Secretary's delegate from among the collective nominations by the Governors of all member States. Any individual whose term is expiring may be renominated for consideration.

(iii) The number of individuals who must be nominated by a Governor shall be equal to at least three times the number of vacancies available, and each such nominee shall be considered as available for any such vacancy. However, in a case where the terms of both an obligatory member and an at-large member expires the same year, the Governor of the State holding the expiring obligatory seat may indicate that remaining nominees for an obligatory seat may be considered for an at-large seat.

(iv) The procedures in § 601.22 (b)(4)(i) through (iii) also apply when a vacancy occurs prior to the normal expiration of a term of membership of a voting member appointed by the Secretary or the Secretary's delegate.

(v) If a Governor fails to submit a list of at-large nominees within the time allotted, then the new at-large member(s) may be appointed from the list of names submitted by the Governors of the other applicable constituent States.

(vi) The Secretary may remove for cause any Secretarially-appointed member of a Council if the Council concerned first recommends removal by an affirmative vote of not less than two-thirds of the Council members who are voting members. The recommendation must be in writing and include a statement of the reasons upon which the recommendation is based.

(5) *Council organization.* The Chairman shall be elected from among the voting members by a majority vote of the voting members present and voting. The term of office for the Chairman may not exceed one year; however, the Chairman is eligible for re-election. The Council may establish other officers as deemed necessary and set their terms of office. The Council may appoint standing and ad hoc committees from among the voting and nonvoting members as it deems necessary for the conduct of Council business. Such committees shall conform to the procedures for assuring open meetings specified for the Council.

(c) *Administrative staff.* Each Council shall appoint an Executive Director and such other full and part time administrative employees as the Secretary determines are necessary to the performance of its functions, and which are consistent with budgetary limitations. However, the number of such employees may not exceed seven except as approved by the Director, NMFS. The Executive Director and staff are responsible to the Chairman of the Council.

(1) *Executive director*—(i) *Duties.* Each Council, through its Chairman, shall assign such duties to the Executive Director as it deems appropriate, consistent with these uniform standards.

(ii) *Compensation.* The administrative responsibilities, coupled with the complexity of the workload of the Council, will influence the pay level appropriate to a given Executive Director position, provided that compensation shall not exceed the yearly rate for the highest step of a GS-15 in the General Schedule.

(2) *Other administrative staff*—(i) *Minimum.* As a minimum, each Council shall have an administrative staff consisting of an executive director, an administrative officer, and a secretary.

(ii) *Additional staff.* Additional administrative staff above the minimum prescribed above will vary by Council because of differences in workload and availability of resources. The number and types of additional positions will also vary over time as the work of the Council is defined during its initial phase of operation.

(d) *Scientific and statistical committee.* Each Council shall establish and maintain, and appoint the members of, a Scientific and Statistical Committee to assist it in the development, collection and evaluation of such statistical, biological, economic, social and other scientific information as is relevant to such Council's development or amendment of any fishery management plan. The Council is authorized to pay the actual expenses of such Committee members while engaged in Council business.

(1) *Committee function.* The Scientific and Statistical Committee provides expert scientific and technical advice to the Regional Council on the development of fishery management policy, on the preparation of fishery management plans, and on the effectiveness of such plans once in operation. The Committee aids the Council in identifyfing scientific resources available for the development of plans, in establishing the objectives of plans, in establishing criteria for judging plan effectiveness and in the review of plans.

(2) *Committee organization.* The members of the Committee and a Chairman are appointed by the Council. Membership shall be multidisciplinary, including both biological and social scientists from the Federal, State, and private scientific community who are knowledgeable about the fisheries to be managed. The size of the Committee is discretionary within the resources budgeted to the particular Council. The Committee shall meet in the area encompassed by the Council's constituent States, with the approval of the Chairman of the Council. No staff is assigned to this Committee but staff support may be requested from the Chairman of the Council or the Executive Director.

(e) *Fishery advisory panels.* Each Council is authorized to establish such other advisory panels as are necessary or appropriate to assist it in carrying out its functions under the Act. The Councils are authorized to pay the actual expenses of the members of such panels while engaged in the performance of Council business.

(1) *Panel function.* Fishery Advisory Panels are authorized principally to obtain the pragmatic advice and counsel of the people most affected by, or interested in, Council matters of fishery management policy; on the preparation of fishery management plans; on their review prior to submission to the Secretary; and on their effectiveness once in operation. These Panels aid the Council in establishing both the goals and objectives of plans as well as the criteria for judging plan effectiveness, and serve as a communication link with those who must operate under the management regime.

(2) *Panel organization.* The members and a Chairman are appointed by the Council. The membership of each Panel shall be composed of a balanced representation of the interests of those who are either actually engaged in the harvest, processing or consumption of, or are knowledgeable and interested in the conservation and management of, the applicable fishery or stock(s) of fish. The size of each Panel is discretionary within the resources available to the particular Council, but each panel must be of sufficient size and number to permit a balanced representation of interests. It is suggested for the purpose of minimizing administrative requirements that each Council establish one broad-based advisory panel. Subpanels may be used to provide advice on individual fisheries on unique fishery resources under Council consideration. The Panels shall meet in the area encompassed by the Council's constituent States as deemed necessary by the Council Chairman. No staff is assigned to these Panels, but staff support may be requested from the Chairman of the Council or the Executive Director.

[42 FR 34452, July 5, 1977, as amended at 48 FR 56590, Dec. 22, 1983]

§ 601.23 Administrative practices and procedures.

(a) *General.* The Act directs the Secretary to provide the Councils with administrative support services as are necessary for their effective functioning. The Administrator of the General Services Administration is directed by the Act to furnish each Council with such offices, equipment, supplies and services as he is authorized to furnish to any agency or instrumentality of the United States. All Federal agencies are authorized to detail personnel on a reimbursable basis to the Councils after consulting with the Director, NMFS. (See paragraphs (d)(3) and (e)(2) of this section.) Uniform Standards in this section are provided in order to expedite the delivery of this support with a minimum burden on the substantive work of the Councils.

(b) *NOAA field units.* NOAA field units are assigned to provide services and support to each Council as follows:

Council	Servicing field unit
New England	Northeast region, NMFS.
Mid-Atlantic	Do.
South Atlantic	Southeast region, NMFS.
Caribbean	Do.
Gulf of Mexico	Do.
Pacific	Northwest region, NMFS.
North Pacific	Alaska region, NMFS.
Western Pacific	Southwest region, NMFS.

These NOAA field units are authorized to provide for budgetary, accounting, personnel, and procurement support to their respective Councils, and may act as liaison between the Councils and other Federal agencies.

(c) *Budgeting, funding, and accounting*—(1) *Federal funds.* The funding for the administrative and technical support of Council operations is included in the budget of the Department of Commerce and, through that agency, in the budgets of NOAA and NMFS. The funding requirements for the Councils are subject to regular budgetary review procedures. Annual grants will provide such federal funds as the Secretary determines are necessary to the performance of the functions of the Councils and consistent with budgetary limitations.

(2) *Funds from other sources.* [Reserved]

(3) *Financial procedures and standards.* The Councils shall be governed by the requirements of Office of Management and Budget Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations" (41 FR 32016) as published July 30, 1976, and the following standards:

(i) *Procurement.* The Councils shall establish their own procurement policies and procedures, which shall be included in the Statement of Organization, Practices, and Procedures (see § 601.25). However, all Councils shall adhere to the requirements set forth in OMB Circular A-110, Attachment 0, paragraphs 3 and 4.

(ii) *Financial management system.* The fiscal year will coincide with the Federal Government's fiscal year. A Cash Receipts and Disbursement Journal with a monthly Summary of Accounts is required as a minimum bookkeeping system. In addition, a Statement of Income and Expenses for the Council shall be prepared monthly for the Council membership. Each cash disbursement shall be approved by an individual(s) designated by the Council Chairman. The approval authority shall be included in any Statement of Organization, Practices, and Procedures published after the effective date of this regulation. A uniform classification of accounts shall be used by all Councils in maintaining accounting records in accordance with the Model Accounting System issued by NMFS on November 26, 1976 and provided to the Councils. When budget estimates are submitted to the Director, the uniform account classification titles shall be used.

(iii) *Advance of funds and letters of credit.* Grant funds in an amount less than $250,000 will be disbursed from the Department of the Treasury upon receipt in NOAA of a properly executed Advance of Funds request (Form SF-220). OMB Circular A-110 limits the amounts of funds that can be disbursed and requires that transfer of funds from the Treasury be made as soon as possible to the time of disbursement by the grantee. A Letter of Credit will be established for grants in excess of $250,000. Drawdowns from the Treasury will be made through the commercial bank and a Federal Reserve Bank. The Council shall initiate each drawdown at approximately the same time that checks are issued by the Council in payment of Council liabilities. Drawdowns should not be made more frequently than daily or in amounts less than $10,000. These requirements are under the Department of the Treasury Circular 1075, "Regulations Governing Withdrawal of Cash from the Treasury for Advances Under Federal Grants and Other Programs" (38 FR 5242) as published February 27, 1973.

(iv) *Audit.* Independent audit is required not less than every two years. Annual audits may be performed at the Council's discretion. All Councils are subject to audit by the Secretary of Commerce and the Comptroller General of the United States. The scope of audit may include: Conduct of financial operations; compliance with applicable laws and regulations; economy and efficiency of administrative procedures; and achievement of results.

(v) *Financial reports.* Reports are required which summarize total expenditures made and Federal funds unexpended for each award, and the status of Federal cash received. The Report of Federal Cash Transactions (Form SF-272) is required from each Council quarterly and should be submitted to the NOAA Grants Officer no later than 15 working days after the end of the quarter. A final report is required upon completion of the grant, to be submitted within 90 days after completion of the grant. The Financial Status Report (Form SF-269) is required from each Council quarterly and should be submitted to the NOAA Grants Officer no later than 15 working days after the end of the quarter. A final report is required upon completion of the grant. Guidance for the preparation of these reports and other financial reporting procedures is in Attachment G of OMB Circular A-110.

(d) *Employment practices.* The following sets forth the responsibilities of the Councils with regard to personnel matters and establishes personnel related standards to be used by the Secretary in analyzing Council budgets.

(1) *Staffing.* Each Council may appoint and assign duties to an Executive Director and such other full and part time administrative employees as the Secretary determines are necessary to the performance of its functions. Each position must be justified during the budget process described in OMB Circular A-110. Descriptions of the work to be performed shall be submitted in accordance with § 601.23(d)(6) dealing with salary and wage administration.

(2) *Experts and consultants.* Each Council may contract with experts and consultants as needed and within their respective budgets to provide technical assistance. Such experts and consultants may not provide services on a permanent basis (see § 601.231(e)(2)).

(3) *Details of Government employees.* Each Council may request the head of any Federal agency to detail to such Council on a reimbursable basis any personnel of such agency to assist the Council in the performance of its functions under the Act (see § 601.23(e)(2)). The length of such details shall be mutually determined by the Council, the Federal employee and his or her agency. Federal employees so detailed retain all benefits, rights and status as they are entitled to in their regular employment. The Councils may negotiate arrangements with State or local governments to utilize employees of those governments.

(4) *Nondiscrimination.* All activities of the Council must operate under a policy of equal employment opportunity. Council staff positions shall be filled solely on the basis of merit, fitness, competence, and qualifications. Employment actions shall be free from discrimination based on race, religion, color, national origin, sex, age, or physical handicap.

(5) *Personnel actions.* Subject to these instructions, and within budgetary constraints, the Councils may establish positions, recruit, hire, compensate and dismiss personnel. Involuntary separation should be for cause alone, with reasonable notice given to the employee.

(6) *Salary and wage administration.* (i) In setting rates of pay for Council staff, the principle of equal pay for equal work shall be followed. Variations in basic rates of pay should be in proportion to substantial differences in the difficulty and responsibilities of the work performed.

(ii) A cost of living allowance may be applied to the salaries of Council members and staff whose post of duty is in one of the following areas: Alaska, Hawaii, Guam, Virgin Islands, and Puerto Rico. The rate of cost of living allowance may not exceed that paid by the Federal Government in the same area. The current rates may be obtained from the applicable NOAA field unit.

(iii) The duties of any new position shall be contained in a brief description to be submitted to the NOAA personnel office servicing the NMFS Regional Office assigned to a Council prior to the submission of a budget in which the salary of that position is requested. The Council will be provided a salary range appropriate to the position and a determination of the applicability of the Fair Labor Standards Act. The Council then may fill the position at any salary level within that range, except that, unless the recruitment of exceptionally qualified employees is hampered, the policy of hiring at the beginning rate shall be recognized. The annual pay for any staff position may not exceed the current rate for the top step of grade 15 of the Federal General Schedule at any time. After a position has been filled, an employee may be promoted annually and recognized for superior performance in accordance with Council policies.

(7) *Leave.* Employees of the Council should be granted paid leave for holidays, vacations or exigencies, sickness, and civil duties (jury, military reserve obligations) as determined by the Council. Paid annual leave should not exceed 20 days per year, and sick leave should not exceed 13 days per year. Earned annual and sick leave may be accumulated from year to year.

(8) *Employee benefits.* The Council should provide its employees the opportunity to participate in group medical insurance, life insurance and retirement plans and pay a reasonable proportion of the cost of such plans.

(9) *Conduct.* The Councils are responsible for maintaining high standards of ethical conduct among themselves, their staffs, and their advisory groups. Such standards should include the following principles:

(i) No employee of the Council shall use his or her official authority or influence derived from his or her position with the Council for the purpose of interfering with or affecting the result of an election to or a nomination for any national, state, county, or municipal elective office.

(ii) No employee of the Council shall be deprived of employment, position, work, compensation, or benefit provided for or made possible by the Act on account of any political activity or lack of such activity in support of or in opposition to any candidate or any political party in any national, state, county, or municipal election, or on account of his or her political affiliation.

(iii) No Council member or employee shall pay, or offer, or promise, or solicit, or receive from any person, firm, or corporation, a contribution of money or anything of value in consideration of either support or the use of influence or the promise of support, or influence in obtaining for any person, any appointive office, place or employment under the Council.

(iv) No employee of the Council shall have a direct or indirect financial interest that conflicts with the fair and impartial conduct of his or her council duties.

(v) No Council member, employee of the Council or member of a Council advisory group shall use or allow the use, for other than official purposes, of information obtained through or in connection with his or her Council employment that has not been made available to the general public.

(vi) No Council member or employee of the Council shall engage in criminal infamous, dishonest, notoriously immoral or disgraceful conduct prejudicial to the Council.

(vii) No Council member or employee of the Council shall use Council property on other than official business. Such property shall be protected and preserved from improper or deleterious operation or use.

(10) *Personnel files.* A file for each council member containing appointment papers, security reports, biographical data and other official papers will be centrally maintained in NOAA under security and safeguard conditions required of files subject to the Privacy Act. This file will be available to the member, and to other persons only when a need to know has been established. Each Council should maintain in its office, personnel files

on their employees and experts and consultants under contract under appropriate safeguards in accordance with the Privacy Act.

(11) *Security investigations.* When it is anticipated that security classified information will be kept or handled in council offices, certain employees shall be designated to be permitted access to the information in accordance with Federal standards and shall receive appropriate security clearance from the Office of Investigation and Security of the Department of Commerce.

(e) *Personnel*—(1) *Council staff.* The Councils may, consistent with the standards of employment practice standards contained in § 601.23(d), establish positions and recruit, hire, compensate, and dismiss personnel. The personnel procedures of each Council will be subject to audit periodically.

(2) *Ad Hoc staff support.* All Federal agencies are authorized by section 302 (f)(2) of the Act to detail personnel to the Council on a reimbursable basis. Any Council requests to the heads of such agencies must contain the purpose of the detail, the length of time of the detail, the compensation to be paid, and the stipulation that the Director, NMFS, be consulted prior to granting the request. Copies of this correspondence shall be transmitted to the Director, NMFS, through the appropriate NOAA Field Office to facilitate such consultation. Legal Counsel on a continuing basis is available from the regional office of the NOAA Office of General Counsel. Councils are expected to obtain legal counsel from NOAA before seeking other legal counsel. Other experts and consultants including legal counsel, may be used as the Council considers appropriate, consistent with budgetary limitations (see § 601.23(d)(2)).

(3) *Council access to security classified material.* The security investigation that is routinely conducted at the time a nominee to the Council is appointed is the basis for authorizing access on a need-to-know basis to material classified Confidential. Normally this should be sufficient for Council purposes (see also § 601.22(b)(2)(iv)). Clearance for higher classifications may be granted, following regular Federal procedures, by the Secretary. Access to security classified material is governed by security regulations and procedures pursuant to Executive Order 11652, effective June 1, 1972. Need-to-know is determined by the authority having custody of the material. Persons who are not members of the Council, including Council staff, and members of advisory groups, must possess the appropriate security clearance before they may be present when classified materials are discussed or examined. Such clearances will be requested through the appropriate NOAA field unit.

(4) *Council procedures to protect confidentiality of statistics.* Each Council will establish appropriate procedures applicable to it and to its committees and advisory panels for ensuring the confidentiality of the statistics that may be submitted to it by Federal or State authorities, and may be voluntarily submitted to it by private persons; including, but not limited to, procedures for the restriction of Council employee access and the prevention of conflicts of interest; except that such procedures must, in the case of statistics submitted to the Council by a State, be consistent with the laws and regulations of that State concerning the confidentiality of such statistics.

(f) *Compensation and expense*—(1) *Compensation.* The voting members of each council who are not employed by the Federal Government or any State or local government shall receive compensation at the daily rate for a GS-18 in the General Schedule when engaged in the actual performance of duties as assigned by the Chairman of the Council.

(2) *Expenses.* Council voting members, the nonvoting Executive Director of the Marine Fisheries Commission for the geographical area concerned, (if any), the additional nonvoting member of the Pacific Council, and the members of the advisory panels shall be reimbursed for actual expenses associated with travel on official Council business. The Council may also pay the transportation and expenses, on an actual expense per diem basis, of invited experts and consultants, and Council staff. All such expenses must be authorized by the

Chairman of the Council or the Executive Director and be supported by detailed vouchers attested to by the person incurring the expenses. Individual receipts, except for hotel receipts, are not required. Foreign travel must have the prior consent of the Administrator.

(3) *Actual expense defined.* Actual expenses include transportation by air coach, rail coach, bus or privately-owned vehicle (automobile or private plane—reimbursed on a per mile basis); room and meals within a reasonable limit to be established by the NOAA Travel Handbook; and incidental expenses such as taxi fares, parking and telephone calls on official business.

(g) *Reporting.* The Councils may submit such periodic reports as the Council deems appropriate and any other relevant report which may be requested by the Secretary. Requirements for periodic financial or other reports for purposes of NOAA budgetary control and reporting are described in individual grants issued to the Councils and in § 601.23(c)(3).

[42 FR 34452, July 5, 1977, as amended at 42 FR 36980, July 18, 1977; 48 FR 56590, Dec. 22, 1983]

§ 601.24 Operational practices and procedures.

(a) *General.* In fulfilling the Council's responsibilities and functions, the Council members will meet in plenary session, in working groups, or individually to hear statements in order to clarify issues, gather information or make decisions regarding material before them. This section establishes uniform standards for the conduct of those activities to meet the requirements of the Magnuson Act and to facilitate the exercise of Council responsibilities. This section applies to any formally constituted work group or team which meets at the direction of the Council.

(b) *Meetings*—(1) *General.* The Councils will meet at the call of the Chairman or upon request of a majority of the voting members. Advisory groups will meet the approval of the Chairman of the Council. Emergency meetings will be held at the call of the Chairman or equivalent presiding officer. The Councils will develop a mechanism for coordinating requests for advice from their advisory groups through the Executive Director.

(2) *Notice.* Timely public notice of each regular meeting and each emergency meeting, including the time, place, and agenda of the meeting, will be published in local newspapers in the major fishing ports of the Council's region (and in other major fishing ports having a direct interest in the affected fishery) and such notice may be given by such other means as will result in wide publicity. Timely notice of each regular meeting will also be published in the FEDERAL REGISTER.

(3) *Record.* Minutes of each meeting will be kept and will contain a record of the persons present, an accurate description of matters discussed and conclusions reached, and copies of all statements filed.

(4) *Conduct.* (i) Meetings will be conducted in a manner to permit the greatest possible participation by all members of the Council and the public. Interested persons will be permitted to present oral or written statements regarding the matters on the agenda at meetings. Decisions by consensus are permitted except where the issue is Council approval or amendment of a fishery management plan (including any proposed regulations), or comments for the Secretary on foreign fishing applications or fishery management plans developed by the Secretary. In these cases, a vote is required.

(ii) A majority of the voting members of any Council shall constitute a quorum for Council meetings, but one or more such members designated by the Council may hold hearings.

(iii) When there is a vote, the majority of the voting members present and voting will rule. Voting by proxy is not permitted. Where unanimity is required, the unanimous vote of a quorum of the voting members of the Council will suffice.

(iv) Voting members of the Council who disagree with the majority on any issue to be submitted to the Secretary may submit a statement of their reasons for dissent to the Secretary.

(v)(A) Unless closed in accordance with paragraph (b)(4)(vi) of this section, each regular meeting and each emergency meeting will be open to the public.

(B) Subject to the precedures established by the Council under § 601.23(e)(4), and the guidelines prescribed by the Secretary under Part 603 relating to confidentiality, the administrative record (including minutes required under paragraph (b)(3) of this section) of each meeting, and records or other documents which were made available to or prepared for or by the Council, committee, or panel incident to the meeting, will be available for public inspection and copying at a single location in the offices of the Council.

(vi) Each Council, scientific and statistical committee, and advisory panel:

(A) Will close any meeting, or portion thereof, that concerns matters or information that bears a national security classification; and

(B) May close any meeting, or portion thereof, that concerns matters or information that pertains to national security, employment matters, advisory panel and statistical committee appointments, contractor selection, or briefings on litigation in which the Council is interested.

(vii) If any meeting or poriton is closed, the Council, committee, or panel concerned will publish notice of the closure in local newspapers in the major fising ports within its region (and in other major, affected fising ports), including the time and place of the meeting.

(5) *Frequency and duration.* The Councils shall meet in plenary session at least once every three months. Council advisory groups may meet as frequently as necessary, with the approval of the Council Chairman.

(6) *Location.* (i) Each Council shall conduct all meetings within its geographic area of concern. In the particular case of the North Pacific Council, "geographical area of concern" means within the State of Alaska. When two or more Councils have been designated by the Secretary to prepare a fishery management plan jointly, Councils so designated may meet jointly within their constituent States for the purpose of developing or amending such a plan.

(ii) The Council meeting place should have a capacity large enough to accommodate the anticipated public attendance and be easily accessible to those interested in attending.

(c) *Hearings*—(1) *General.* The Magnuson Act directs the Councils to hold public hearings, at appropriate times and in appropriate locations in the geographical area concerned, in order to provide the opportunity for all interested persons to be heard in the development of fishery management plans, amendments thereto, and with respect to the administration and implementation of the Magnuson Act. The Council may use its judgment regarding when and where such hearings should be held, keeping in mind that the term "geographical area of concern", for purposes of holding hearings, may include an area under the authority of another Council if the fish in the fishery concerned migrate into, or occur in, that area or if the matters being heard affect fishermen of that area; but not unless such other Council is first consulted regarding the conduct of such hearings within its area.

(2) *Conduct.* When it is determined that a hearing is appropriate, the Chairman of the Council will designate at least one voting member of the Council to officiate. Conduct of the hearing, beyond the stipulation that all points of view be given a chance for expression, is within the discretion of the hearing official under whatever instructions the Council may wish to provide.

(3) *Notice.* Hearings shall follow the same procedures for announcement as for Council and advisory group meetings. Advance notice also should be given in the local media where the hearing is to take place. Publicity should be sufficient in time, substance, and area coverage to assure that all interested parties are aware of the opportunity to make their views known.

(4) *Record.* An accurate record of the participants and their views shall be reported back to the Council and maintained as a part of the Council's official records.

(d) *Council operational structure*—(1) *General.* In addition to the Council staff and the advisory groups that are provided for in the Act, an operational structure will be needed to develop basic inputs to the Fishery Management Plans and to assemble drafts for formal review by the Councils and their advisors. The operation structure(s) selected by a Council should:

(i) Address directly the responsibilities and functions listed in section 302(h) of the Act; and

(ii) Strike a reasonable balance among the following criteria.

(2) *Criteria for formation*—(i) *Focused responsibility.* The structure selected should assign clearly defined responsibilities in a clearly defined chain of command consistent with the formal structure provided in the Act.

(ii) *Administrative simplicity.* The structure selected should permit thorough and uncomplicated supervision by those with formal responsibility, including the Executive Director of the Council.

(iii) *Flexibility.* Within defined responsibilities, the structure should be able to bring to bear the necessary expertise on planning problems and to respond to shifts in Council priorities.

(iv) *Independence and relevance of science.* The scientific input to the development of plans should to the extent possible, be institutionally insulated from managerial biases and pressure from interested parties while remaining relevant to the problems of management.

(v) *Quality of scientific and technical information.* The structure should assure that the best scientific and technical information available will be applied in plan development.

(vi) *Minimum cost.* Cost, both in dollars and in diversionary impact on ongoing programs should be minimized within the constraints of the other criteria.

[42 FR 34452, July 5, 1977, as amended at 48 FR 56590, Dec. 22, 1983]

§ 601.25 Council statement of organization, practices and procedures.

(a) *General.* (1) The Act requires that the details of how a Council operates shall be published by the Council and made available to the public. The required Statement of Organization, Practices and Procedures, as a minimum, shall address the items listed in the format below.

(2) Publication will be in the FEDERAL REGISTER, and include an address where interested members of the public may write to request copies. Changes in operating practices and procedures shall be reflected in revisions to the statement, which shall likewise be published and made available to the public.

(b) *Format.*

(1) Name of council.

(2) Location of offices.

(3) Legal authority.

(4) Purpose.

(5) Council composition.

(6) Officers and terms of office.

(7) Staff.

(i) Composition.

(ii) Functions.

(iii) Employment practices.

(8) Standing committees of council members.

(i) Name.

(ii) Composition.

(iii) Function.

(9) Meetings and hearings.

(i) Frequency.

(ii) Duration.

(iii) Location.

(iv) Agendas or orders of business.

(v) Minutes.

(vi) General rules of procedures.

(vii) Authority of the chair.

(10) Advisory panels.

(i) Name.

(ii) Composition.

(iii) Function.

(11) Organization of management plan development teams.

(i) Organization.

(ii) Practices and procedures.

(iii) Balance among criteria.

(A) Focused responsibility.

(B) Administrative simplicity.

(C) Flexibility.

(D) Independence and relevance of science.

(E) Quality of scientific and technical information.

(F) Minimum cost.

(12) Financial management system.

(i) Standards for and code of employment conduct in contract awards and administration.

(ii) Procurement procedures.

(iii) Property management.

(iv) Accounting and budgetary control procedures.

[42 FR 34452, July 5, 1977]

PART 602—GUIDELINES FOR FISHERY MANAGEMENT PLANS

Subpart A—General

Sec.
602.1 Purpose and scope.
602.2 Style guide.

Subpart B—National Standards

602.10 General.
602.11 National Standard 1—Optimum Yield.
602.12 National Standard 2—Scientific information.
602.13 National Standard 3—Management Units.
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602.15 National Standard 5—Efficiency.
602.16 National Standard 6—Variations and Contingencies.
602.17 National Standard 7—Costs and Benefits.
APPENDIX A TO SUBPART B—EXPLANATORY MATERIAL

AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 48 FR 7408, Feb. 18, 1983, unless otherwise noted.

Subpart A—General

§ 602.1 Purpose and scope.

The Act requires that any fishery management plan or amendment prepared by either the Regional Fishery Management Councils or the Secretary of Commerce, and any regulations issued to implement a fishery management plan or amendment, shall be consistent with seven national standards, the other provisions of the Act, and any other applicable law. Part 602 implements those portions of the Act that pertain to the development, content, submission, amendment, review, and implementation of fishery management plans, and establishes guidelines to assist in achieving the required consistency.

§ 602.2 Style guide.

(a) *Definitions.* The terms used in these guidelines have the meanings that are prescribed in section 3 of the Act. In addition, the following definitions apply:

The Act—the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*), also known as the FCMA, or the Magnuson Act.

Council—Regional Fishery Management Council, as established by the Act.

Secretary—Secretary of Commerce.

(b) *Abbreviations.*

ABC—acceptable biological catch.
DAH—estimated domestic annual harvest.
DAP—estimated domestic annual processing.
EY—equilibrium yield.
EEZ—exclusive economic zone.
FMP—fishery management plan.
JVP—joint venture processing.
MSY—maximum sustainable yield.
OY—optimum yield.
PMP—preliminary fishery management plan.
TAC—total allowable catch.
TALFF—total allowable level of foreign fishing.

(c) *Word usage.* (1) *Must* is used to denote an obligation to act; it is used primarily when referring to requirements of the Act, the logical extension thereof, or of other applicable law.

(2) *Should* is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary's interpretation of the Act, and is a factor reviewers will look for in evaluating an FMP.

(3) *May* is used in a permissive sense.

(4) *May not* is proscriptive; it has the same force as *must not.*

(5) *Will* is used descriptively.

(6) *Shall* is not used at all, except when quoting the statutory language of each standard. "Must" is used instead of "shall" to avoid confusion with the future tense.

(7) *Could* is used when giving examples, in a hypothetical, permissive sense.

(8) *Can* is used to mean "is able to," as distinguished from "may."

(9) *Examples* are given by way of illustration and further explanation. They are not inclusive lists; they do not limit options.

(10) *Analysis,* as a paragraph heading, signals more detailed guidance as to the type of discussion and examina-

tion an FMP should contain to demonstrate compliance with the standard in question.

(11) *Determine* is used when referring to OY.

(12) *Adjust* is used when establishing a deviation from MSY for biological reasons, such as in establishing ABC, TAC, or EY.

(13) *Modify* is used when the deviation from MSY is for the purpose of determining OY, in accord with relevant economic, social, or ecological factors.

(14) *Industry* includes recreational and commercial fishing and the harvesting, processing, and marketing sectors.

[48 FR 7408, Feb. 18, 1983, as amended at 53 FR 24645, June 29, 1988]

Subpart B—National Standards

§ 602.10 General.

(a) *Purpose.* (1) This subpart establishes guidelines, based on the national standards, to assist in the development and review of FMPs, amendments, and regulations prepared by the Councils and the Secretary.

(2) In developing FMPs, the Councils have the initial authority to ascertain factual circumstances, to establish management objectives, and to propose management measures that will achieve the objectives. The Secretary will determine whether the proposed management objectives and measures are consistent with the national standards, other provisions of the Act, and other applicable law. The Secretary has an obligation under section 301(b) of the Act to inform the Councils of the Secretary's interpretation of the national standards so that they will have an understanding of the basis on which FMPs will be reviewed.

(3) The national standards are statutory principles that must be followed in any FMP. The guidelines summarize Secretarial interpretations that have been and will be, applied under these principles. The guidelines are intended as aids to decisionmaking; FMPs formulated according to the guidelines will have a better chance for expeditious Secretarial review, approval, and implementation. FMPs that are in substantial compliance with the guidelines, the Act, and other applicable law must be approved.

(b) *Fishery management objectives.* (1) Each FMP, whether prepared by a Council or by the Secretary, should identify what the FMP is designed to accomplish, i.e., the management objectives to be attained in regulating the fishery under consideration. In establishing objectives, Councils balance biological constraints with human needs, reconcile present and future costs and benefits, and integrate the diversity of public and private interests. If objectives are in conflict, priorities should be established among them.

(2) How objectives are defined is important to the management process. Objectives should address the problems of a particular fishery. The objectives should be clearly stated, practicably attainable, framed in terms of definable events and measurable benefits, and based upon a comprehensive rather than a fragmentary approach to the problems addressed. An FMP should make a clear distinction between objectives and the management measures chosen to achieve them. The objectives of each FMP provide the context within which the Secretary will judge the consistency of an FMP's conservation and management measures with the national standards.

§ 602.11 National Standard 1—Optimum Yield.

(a) *Standard 1.* Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery.

(b) *General.* The determination of OY is a decisional mechanism for resolving the Act's multiple purposes and policies, for implementing an FMP's objectives, and for balancing the various interests that comprise the national welfare. OY is based on MSY, or on MSY as it may be adjusted under paragraph (c)(4) of this section. The most important limitation on the specification of OY is that the choice of OY—and the conservation and management measures proposed to achieve it—must prevent overfishing.

(c) *MSY.* (1) MSY, a theoretical concept, is the largest average annual catch or yield that can be taken over a period of time from each stock under prevailing ecological and environmental conditions. It may be presented as a range of values. One MSY may be specified for a related group of species in a mixed-species fishery. Since MSY is a long-term average, it need not be specified annually.

(2) In an unexploited stock of fish, the natural mortality rate is balanced by growth and recruitment rates on average. Once fishing pressure is applied, the balance of mortality, growth, and recruitment is altered, and the average value of these rates and the average population size changes. As the population size changes, a new balance of rates is achieved. The interrelationship between these rates and population size provides the basis for specifying the MSY of a stock. Techniques for estimating MSY depend on the scientific information available. The MSY may be derived from average past catches, stock production models, yield per recruit or dynamic pool models, spawner/recruit relationships, total biomass estimates and estimates of natural mortality, biomass estimates from ecosystem models, or other valid methods.

(3) The determination of OY requires a specification of MSY. However, where sufficient scientific data as to the biological characteristics of the stock do not exist, or the period of exploitation or investigation has not been long enough for adequate understanding of stock dynamics, or where frequent large-scale fluctuations in stock size make this concept of limited value, the OY should be based not on a fabricated MSY but on the best scientific information available.

(4) MSY may be only the starting point in providing a realistic biological description of allowable fishery removals. MSY may need to be adjusted because of environmental factors, stock peculiarities, or other biological variables, prior to the determination of OY. Examples are ABC, TAC, and EY. Such adjustments are valid, provided that they are explained and justified.

(d) *Overfishing.* (1) Overfishing is a level of fishing mortality that jeopardizes the capacity of a stock(s) to recover to a level at which it can produce maximum biological yield or economic value on a long-term basis under prevailing biological and environmental conditions. An FMP must prevent overfishing, except in certain limited situations. For example, harvesting the major component of a mixed fishery at its optimum level may result in the overharvest of a minor (smaller or less valuable) stock component. In another case, solving a particular problem may necessitate pruning larger fish from the population. A Council may decide to permit this type of overharvest if the analysis (paragraph (e)(5) of this section) identifies the benefits from such overfishing, and if the Council's action will not cause any stock component to require protection under the Endangered Species Act.

(2) Significant downward trends in spawning stock sizes and in average annual recruitment over a period of several years may signal that overfishing is occurring. These downward trends usually are preceded or accompanied by increased variability in annual recruitment and by major shifts to younger fish and fewer year classes in the spawning stock. If fishing continues at a rate that perpetuates the downward trends, the spawning stock eventually may be incapable of significant reproduction and may be irreversibly damaged.

(3) Declines in stock size may occur independent of fishing pressure, caused by a combination of factors such as natural fluctuations in the stock itself and in the environment, and man-made changes in essential habitat. Significant adverse alterations in the environment increase the possibility that fishing effort will contribute to a stock collapse. Decisions about the allowable level of fishing mortality will vary according to the conditions of the fishery and the amount of risk associated with different harvest rates.

(4) Since changes in environment/habitat conditions can produce the appearance of overfishing (as can new fishing pressure on an underutilized stock), care should be taken to identi-

fy the cause of the downward trends. Whether the trends in spawning stock size and in average recuitment are caused by environmental changes or by fishing effort, the only direct control under the Act is to propose management measures to reduce fishing mortality. Unless the Council asserts that reduced fishing pressure would not alleviate the problem, the FMP must include measures to reduce fishing mortality. If environmental changes are the primary cause of the downward trends, Councils may recommend restoration of habitat and other ameliorative programs.

(5) Fishing can produce a variety of effects on local and stockwide abundance, availability, size, and composition. Some of these effects have been called "overfishing"—with or without qualifiers such as growth, localized, and pulse. These effects are not "overfishing" under standard 1; a Council may recommend conservation and management measures to prevent or permit these effects, depending on the objectives of a particular FMP.

(e) *Specification of OY.* (1) *OY and management objectives.* Ideally, the process of determining OY and the resulting specification integrate the various objectives of the FMP. Relative weighting of the elements of the OY determination will be influenced both by regional objectives and by national considerations. Rarely will a fishery be managed to meet a single objective. Objectives may conflict. Consequently, priority decisions should be made in developing objectives, the timing of their achievement, and the management measures to achieve them. (See section 602.10.)

(2) *Values in determining OY.* In determining the greatest benefit to the Nation, two values that should be weighed are food production and recreational opportunities (section 3(18)(A) of the Act). They should receive serious attention as measures of benefit when considering the economic, ecological, or social factors used in modifying MSY to obtain OY.

(i) "Food production" encompasses the goals of providing seafood to consumers at reasonable prices, maintaining an economically viable fishery, and utilizing the capacity of U.S. fishery resources to meet nutritional needs.

(ii) "Recreational opportunities" includes recognition of the importance of the quality of the recreational fishing experience, and of the contribution of recreational fishing to the national, regional, and local economies and food supplies.

(3) *Factors relevant to OY.* The Act's definition of OY identifies three categories of factors to be used in modifying MSY to arrive at OY: economic, social, and ecological (section 3(18)(B)). Examples are given below. Not every factor will be relevant in every fishery; for instance, there may be no Indian treaty rights. For some fisheries, insufficient information may be available with respect to some factors to provide a basis for corresponding modifications to MSY.

(i) *Economic factors.* Examples are promotion of domestic fishing, development of unutilized or underutilized fisheries, satisfaction of consumer and recreational needs, and encouragement of domestic and export markets for U.S. harvested fish. Some other factors that may be considered are the value of industrial fisheries the level of capitalization, operating costs of vessels, alternate employment opportunities, and economies of coastal areas.

(ii) *Social factors.* Examples are enjoyment gained from recreational fishing, avoidance of gear conflicts and resulting disputes, preservation of a way of life for fishermen and their families, and dependence of local communities on a fishery. Among other factors that may be considered are the cultural place of subsistence fishing, obligations under Indian treaties, and worldwide nutritional needs.

(iii) *Ecological factors.* Examples are the vulnerability of incidental or unregulated species in a mixed-species fishery, predator-prey or competitive interactions, and dependence of marine mammals and birds or endangered species on a stock of fish. Equally important are environmental conditions that stress marine organisms, such as natural and man-made changes in wetlands or nursery grounds, and effects of pollutants on habitat and stocks.

(4) *Form of OY specification.* (i) The "amount of fish" that constitutes the OY need not be expressed in terms of numbers or weight of fish. The economic, social, or ecological modifications to MSY may be expressed by describing fish having common characteristics, the harvest of which provides the greatest overall benefit to the Nation. For instance, OY may be expressed as a formula that converts periodic stock assessments into quotas or guideline harvest levels for recreational, commercial, and other fishing. OY may be defined in terms of an annual harvest of fish or shellfish having a minimum weight, length, or other measurement. OY may also be expressed as an amount of fish taken only in certain areas, or in certain seasons, or with particular gear, or by a specified amount of fishing effort. In the case of a mixed-species fishery, the incidental-species OY may be a function of the directed catch, or absorbed into an OY for related species.

(ii) If a numerical OY is chosen, a range or average may be specified.

(iii) In a fishery where there is a significant discard component, the OY may either include or exclude discards.

(iv) The OY specification can be converted into an annual numerical estimate to establish the TALFF and to analyze impacts of the management regime. There should be a mechanism in a multiyear plan for periodic reassessment of the OY specification, so that it is responsive to changing circumstances in the fishery.

(5) *Analysis.* An FMP must contain an analysis of how its OY specification was determined (section 303(a)(3) of the Act). It should relate the explanation of overfishing in paragraph (d) of this section to conditions in the particular fishery, and explain how its choice of OY and conservation and management measures will prevent overfishing in that fishery. If overfishing is permitted under paragraph (d)(1) of this section, the analysis must contain a justification in terms of overall benefits and an assessment of the risk of the species reaching a "threatened" or "endangered" status. If the stock has been diminished below a desired level, the analysis should include a program for rebuilding the stock. A Council must identify those economic, social, and ecological factors relevant to management of a particular fishery, then evaluate and weigh them to arrive at the modification (if any) of MSY. The choice of a particular OY must be carefully defined and documented to show that the OY selected will produce the greatest benefit to the Nation.

(f) *OY as a target.* (1) The specification of OY in an FMP is not automatically a quota or ceiling, although quotas may be derived from the OY where appropriate. OY is a target or goal; an FMP must contain conservation and management measures, and provisions for information collection, that are designed to achieve it. These measures should allow for practical and effective implementation and enforcement of the management regime, so that the harvest is allowed to reach but not to exceed OY by a substantial amount. The Secretary then has the obligation to implement and enforce the FMP so that OY is achieved. If management measures prove unenforceable—or too restrictive or not rigorous enough to realize OY—they should be modified; an alternative is to reexamine the adequacy of the OY specification.

(2) Exceeding OY does not necessarily constitute overfishing, although they might coincide. Even if no overfishing resulted, continual harvest at a level above a fixed-value OY would violate national standard 1 because OY was exceeded (not achieved) on a continuing basis.

(g) *OY and foreign fishing.* Section 201(d) of the Act provides that fishing by foreign nations is limited to that portion of the OY that will not be harvested by vessels of the United States. The achievement of OY under national standard 1 requires that foreign fishing vessels be given reasonable opportunity to harvest such "surplus." The exception is where an annual fishing level is certified under section 201(d)(2)(B). The annual fishing level amount is allocated to foreign fishing, as is the remainder of the "surplus" (OY minus DAH); if the determinations under section 201(d)(4) are made, however, allocation of all or part of that remainder may be deferred until the next harvesting season.

(1) *DAH.* Councils must consider the capacity of, and the extent to which, U.S. vessels will harvest the OY on an annual basis. Estimating the amount that U.S. fishing vessels will actually harvest is required to determine the surplus.

(2) *Reserves.* Part of the OY may be held as a reserve to allow for uncertainties in estimates of stock size and of DAH. If an OY reserve is established, an adequate mechanism should be included in the FMP to permit timely release of the reserve to foreign fishermen, if necessary, so that full utilization of the OY may be achieved. An FMP may also provide for a direct transfer of a portion of DAH to TALFF.

(3) *DAP.* (i) Each FMP must identify the capacity of U.S. processors. It must also identify the amount of domestic annual processed fish (DAP), which is the sum of two estimates:

(A) The amount of U.S. harvest that domestic processors will process. This estimate may be based on historical performance and on surveys of the expressed intention of manufacturers to process, supported by evidence of contracts, plant expansion, or other relevant information; and

(B) The amount of fish that will be harvested but not processed (e.g., marketed as fresh whole fish, used for private consumption, or used for bait).

(ii) When DAH exceeds DAP, the surplus is available for JVP. JVP is a part of DAH.

§ 602.12 National Standard 2—Scientific Information.

(a) *Standard 2.* Conservation and management measures shall be based upon the best scientific information available.

(b) *FMP development.* The fact that scientific information concerning a fishery is incomplete does not prevent the preparation and implementation of an FMP (see related §§ 602.13(d)(2) and 602.17(b)).

(1) Scientific information includes, but is not limited to, information of a biological, ecological, economic, or social nature. Successful fishery management depends, in part, on the timely availability, quality, and quantity of scientific information, as well as on the thorough analysis of this information, and the extent to which the information is applied. If there are conflicting facts or opinions relevant to a particular point, a Council may choose among them, but should justify the choice.

(2) FMPs must take into account the best scientific information available at the time of preparation. Between the initial drafting of an FMP and its submission for final review, new information often becomes available. This new information should be incorporated into the final FMP where practicable; but it is unnecessary to start the FMP process over again unless the information indicates that drastic changes have occurred in the fishery that might require revision of the management objectives or measures.

(c) *FMP implementation.* (1) An FMP must specify whatever information fishermen and processors will be required or requested to submit to the Secretary. Information about harvest within State boundaries, as well as in the EEZ, may be collected if it is needed for proper implementation of the FMP and cannot be obtained otherwise. The FMP should explain the practical utility of the information specified in monitoring the fishery, in facilitating inseason management decisions, and in judging the performance of the management regime; it should also consider the effort, cost, or social impact of obtaining it.

(2) An FMP should identify scientific information needed from other sources to improve understanding and management of the resource and the fishery.

(3) The information submitted by various data suppliers about the stock(s) throughout its range or about the fishery should be comparable and compatible, to the maximum extent possible.

(d) *FMP amendment.* FMPs should be amended on a timely basis, as new information indicates the necessity for change in objectives or management measures.

[48 FR 7408, Feb. 18, 1983, as amended at 53 FR 24645, June 29, 1988]

§ 602.13 National Standard 3—Management Units.

(a) *Standard 3.* To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(b) *General.* The purpose of this standard is to induce a comprehensive approach to fishery management. The geographic scope of the fishery, for planning purposes, should cover the entire range of the stock(s) of fish, and not be overly constrained by political boundaries. Wherever practicable, an FMP should seek to manage interrelated stocks of fish.

(c) *Unity of management.* Cooperation and understanding among entities concerned with the fishery (e.g., Councils, States, Federal government, international commissions, foreign nations) are vital to effective management. Where management of a fishery involves multiple jurisdictions, coordination among the several entities should be sought in the development of an FMP. Where a range overlaps Council areas, one FMP to cover the entire range is preferred. The Secretary designates which Council or Councils will prepare the FMP, under section 304(f) of the Act.

(d) *Management unit.* The term "management unit" means a fishery or that portion of a fishery identified in an FMP as relevant to the FMP's management objectives.

(1) *Basis.* The choice of a management unit depends on the focus of the FMP's objectives, and may be organized around biological, geographic, economic, technical, social, or ecological perspectives. For example:

(i) *Biological*—could be based on a stock(s) throughout its range.

(ii) *Geographic*—could be an area.

(iii) *Economic*—could be based on a fishery supplying specific product forms.

(iv) *Technical*—could be based on a fishery utilizing a specific gear type or similar fishing practices.

(v) *Social*—could be based on fishermen as the unifying element, such as when the fishermen pursue different species in a regular pattern throughout the year.

(vi) *Ecological*—could be based on species that are associated in the ecosystem or are dependent on a particular habitat.

(2) *Conservation and management measures.* FMPs should include conservation and management measures for that part of the management unit within U.S. waters, although the Secretary can ordinarily implement them only within the EEZ. The measures need not be identical for each geographic area within the management unit, if the FMP justifies the differences. A management unit may contain, in addition to regulated species, stocks of fish for which there is not enough information available to specify MSY and OY or to establish management measures, so that data on these species may be collected under the FMP.

(e) *Analysis.* To document that an FMP is as comprehensive as practicable, it should include discussions of the following:

(1) The range and distribution of the stocks, as well as the patterns of fishing effort and harvest.

(2) Alternative management units and reasons for selecting a particular one. A less-than-comprehensive management unit may be justified if, for example, complementary management exists or is planned for a separate geographic area or for a distinct use of the stocks, or if the unmanaged portion of the resource is immaterial to proper management.

(3) Management activities and habitat programs of adjacent States and their effects on the FMP's objectives and management measures. Where State action is necessary to implement measures within State waters to achieve FMP objectives, the FMP should identify what State action is necessary, discuss the consequences of State inaction or contrary action, and make appropriate recommendations. The FMP should also discuss the impact that Federal regulations will have on State management activities.

(4) Management activities of other countries having an impact on the fishery, and how the FMP's management measures are designed to take into account these impacts. Interna-

tional boundaries may be dealt with in several ways. For example:

(i) By limiting the management unit's scope to that portion of the stock found in U.S. waters;

(ii) By estimating MSY for the entire stock and then basing the determination of OY for the U.S. fishery on the portion of the stock within U.S. waters; or

(iii) By referring to treaties or cooperative agreements.

[48 FR 7408, Feb. 18, 1983, as amended at 53 FR 24645, June 29, 1988]

§ 602.14 National Standard 4—Allocations.

(a) *Standard 4.* Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be: (A) Fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(b) *Discrimination among residents of different States.* An FMP may not differentiate among U.S. citizens, nationals, resident aliens, or corporations on the basis of their State of residence. An FMP may not incorporate or rely on a State statute or regulation that discriminates against residents of another State. Conservation and management measures that have different effects on persons in various geographic locations are permissible, if they satisfy the other guidelines under standard 4. Examples of these precepts are:

(1) An FMP that restricted fishing in the FCZ to those holding a permit from State X would violate standard 4 if State X issued permits only to its own citizens.

(2) An FMP that closed a spawning ground might disadvantage fishermen living in the State closest to it, because they would have to travel farther to an open area, but the closure could be justified under standard 4 as a conservation measure with no discriminatory intent.

(c) *Allocation of fishing privileges.* An FMP may contain management measures that allocate fishing privileges if such measures are necessary or helpful in furthering legitimate objectives or in achieving the OY, and if the measures conform with paragraphs (c)(3) (i) through (iii) of this section.

(1) *Definition.* An "allocation" or "assignment" of fishing privileges is a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals. Any management measure (or lack of management) has incidental allocative effects, but only those measures that result in direct distributions of fishing privileges will be judged against the allocation requirements of standard 4. Adoption of an FMP that merely perpetuates existing fishing practices may result in an allocation, if those practices directly distribute the opportunity to participate in the fishery. Allocations of fishing privileges include, for example, per-vessel catch limits, quotas by vessel class and gear type, different quotas or fishing seasons for recreational and commercial fishermen, assignment of ocean areas to different gear users, and limitation of permits to a certain number of vessels or fishermen.

(2) *Analysis of allocations.* Each FMP should contain a description and analysis of the allocations existing in the fishery and of those made in the FMP. The effects of eliminating an existing allocation system should be examined. Allocation schemes considered but rejected by the Council should be included in the discussion. The analysis should relate the recommended allocations to the FMP's objectives and OY specification, and discuss the factors listed in paragraph (c)(3) of this section.

(3) *Factors in making allocations.* An allocation of fishing privileges must be fair and equitable, must be reasonably calculated to promote conservation, and must avoid excessive shares. These tests are explained in paragraphs (c)(3) (i) through (iii) of this section:

(i) *Fairness and equity.* (A) An allocation of fishing privileges should be rationally connected with the achievement of OY or with the furtherance of a legitimate FMP objective. Inherent in an allocation is the advantaging of one group to the detriment of another. The motive for making a particular allocation should be justified in terms of the objectives of the FMP; otherwise, the disadvantaged user groups or individuals would suffer without cause. For instance, an FMP objective to preserve the economic status quo cannot be achieved by excluding a group of long-time participants in the fishery. On the other hand, there is a rational connection between an objective of harvesting shrimp at their maximum size and closing a nursery area to trawling.

(B) An allocation of fishing privileges may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. An allocation need not preserve the status quo in the fishery to qualify as "fair and equitable," if a restructuring of fishing privileges would maximize overall benefits. The Council should make an initial estimate of the relative benefits and hardships imposed by the allocation, and compare its consequences with those of alternative allocation schemes, including the status quo. Where relevant, judicial guidance and government policy concerning the rights of treaty Indians and aboriginal Americans must be considered in determining whether an allocation is fair and equitable.

(ii) *Promotion of conservation.* Numerous methods of allocating fishing privileges are considered "conservation and management measures" under section 303 of the Act. An allocation scheme may promote conservation by encouraging a rational, more easily managed use of the resource. Or it may promote conservation (in the sense of wise use) by optimizing the yield, in terms of size, value, market mix, price, or economic or social benefit of the product.

(iii) *Avoidance of excessive shares.* An allocation scheme must be designed to deter any person or other entity from acquiring an excessive share of fishing privileges, and to avoid creating conditions fostering inordinate control, by buyers or sellers, that would not otherwise exist.

(iv) *Other factors.* In designing an allocation scheme, a Council should consider other factors relevant to the FMP's objectives. Examples are economic and social consequences of the scheme, food production, consumer interest, dependence on the fishery by present participants and coastal communities, efficiency of various types of gear used in the fishery, transferability of effort to and impact on other fisheries, opportunity for new participants to enter the fishery, and enhancement of opportunities for recreational fishing.

§ 602.15 National Standard 5—Efficiency.

(a) *Standard 5.* Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(b) *Efficiency in the utilization of resources*—(1) *General.* The term "utilization" encompasses harvesting, processing, and marketing, since management decisions affect all three sectors of the industry. The goal of promoting efficient utilization of fishery resources may conflict with other legitimate social or biological objectives of fishery management. In encouraging efficient utilization of fishery resources, this standard highlights one way that a fishery can contribute to the Nation's benefit with the least cost to society: given a set of objectives for the fishery, an FMP should contain management measures that result in as efficient a fishery as is practicable or desirable.

(2) *Efficiency.* In theory, an efficient fishery would harvest the OY with the minimum use of economic inputs such as labor, capital, interest, and fuel. Efficiency in terms of aggregate costs then becomes a conservation objective, where "conservation" constitutes wise use of all resources involved in the fishery, not just fish stocks.

(i) In an FMP, management measures may be proposed that allocate fish among different groups of individuals or establish a system of property rights. Alternative measures examined in searching for an efficient outcome will result in different distributions of gains and burdens among identifiable user groups. An FMP should demonstrate that management measures aimed at efficiency do not simply redistribute gains and burdens without an increase in efficiency.

(ii) Management regimes that allow a fishery to operate at the lowest possible cost (e.g., fishing effort, administration, and enforcement) for a particular level of catch and initial stock size are considered efficient. Restrictive measures that unnecessarily raise any of those costs move the regime toward inefficiency. Unless the use of inefficient techniques or the creation of redundant fishing capacity contributes to the attainment of other social or biological objectives, an FMP may not contain management measures that impede the use of cost-effective techniques of harvesting, processing, or marketing, and should avoid creating strong incentives for excessive investment in private sector fishing capital and labor.

(c) *Limited access.* A "system for limiting access," which is an optional measure under section 303(b) of the Act, is a type of allocation of fishing privileges that may be used to promote economic efficiency or conservation. For example, limited access may be used to combat overfishing, overcrowding, or overcapitalization in a fishery to achieve OY. In an unutilized or underutilized fishery, it may be used to reduce the chance that these conditions will adversely affect the fishery in the future, or to provide adequate economic return to pioneers in a new fishery. In some cases, limited entry is a useful ingredient of a conservation scheme, because it facilitates application and enforcement of other management measures.

(1) *Definition.* Limited access (or limited entry) is a management technique that attempts to limit units of effort in a fishery, usually for the purpose of reducing economic waste, improving net economic return to the fishermen, or capturing economic rent for the benefit of the taxpayer or the consumer. Common forms of limited access are licensing of vessels, gear, or fishermen to reduce the number of units of effort, and dividing the total allowable catch into fishermen's quotas (a stock-certificate system). Two forms (i.e., Federal fees for licenses or permits in excess of administrative costs, and taxation) are not permitted under the Act.

(2) *Factors to consider.* The Act ties the use of limited access to the achievement of optimum yield. An FMP that proposes a limited access system must consider the factors listed in section 303(b)(6) of the Act and in § 602.14(c)(3) of these guidelines. In addition, it should consider the criteria for qualifying for a permit, the nature of the interest created, whether to make the permit transferable, and the Act's limitation on returning economic rent to the public under section 304(d)(1). The FMP should also discuss the costs of achieving an appropriate distribution of fishing privileges.

(d) *Analysis.* An FMP should discuss the extent to which overcapitalization, congestion, economic waste, and inefficient techniques in the fishery reduce the net benefits derived from the management unit and prevent the attainment and appropriate allocation of OY. It should also explain in terms of the FMP's objectives any restriction placed on the use of efficient techniques of harvesting, processing, or marketing. If during FMP development the Council considered imposing a limited-entry system, the FMP should analyze the Council's decision to recommend or reject limited access as a technique to achieve efficient utilization of the resources of the fishing industry.

(e) *Economic allocation.* This standard prohibits only those measures that distribute fishery resources among fishermen on the basis of economic factors alone, and that have economic allocation as their only purpose. Where conservation and management measures are recommended that would change the economic structure of the industry or the economic conditions under which the industry operates, the need for such measures must be justified in light of the biological, ecological, and social objectives of the FMP as well as the economic objectives.

§ 602.16 National Standard 6—Variations and Contingencies.

(a) *Standard 6.* Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(b) *Conservation and management.* Each fishery exhibits unique uncertainties. The phrase "conservation and management" implies the wise use of fishery resources through a management regime that includes some protection against these uncertainties. The particular regime chosen must be flexible enough to allow timely responses to resource, industry, and other national and regional needs. Continual data acquisition and analysis will help the development of management measures to compensate for variations and to reduce the need for substantial buffers. Flexibility in the management regime and the regulatory process will aid in responding to contingencies.

(c) *Variations.* (1) In fishery management terms, variations arise from biological, social, and economic occurrences, as well as from fishing practices. Biological uncertainties and lack of knowledge can hamper attempts to estimate stock size and strength, stock location in time and space, environmental/habitat changes, and ecological interactions. Economic uncertainty may involve changes in foreign or domestic market conditions, changes in operating costs, drifts toward overcapitalization, and economic perturbations caused by changed fishing patterns. Changes in fishing practices, such as the introduction of new gear, rapid increases or decreases in harvest effort, new fishing strategies, and the effects of new management techniques, may also create uncertainties. Social changes could involve increases or decreases in recreational fishing, or the movement of people into or out of fishing activities due to such factors as age or educational opportunities.

(2) Every effort should be made to develop FMPs that discuss and take into account these vicissitudes. To the extent practicable, FMPs should provide a suitable buffer in favor of conservation. Allowances for uncertainties should be factored into the various elements of an FMP. Examples are:

(i) *Reduce OY.* Lack of scientific knowledge about the condition of a stock(s) could be a reason to reduce OY.

(ii) *Establish a reserve.* Creation of a reserve may compensate for uncertainties in estimating domestic harvest, stock conditions, or environmental factors.

(iii) *Adjust management techniques.* In the absence of adequate data to predict the effects of a new regime, and to avoid creating unwanted variations, a Council could guard against producing drastic changes in fishing patterns, allocations, or practices.

(iv) *Highlight habitat conditions.* FMPs may address the impact of pollution and the effects of wetland and estuarine degradation on the stocks of fish; identify causes of pollution and habitat degradation and the authorities having jurisdiction to regulate or influence such activities; propose recommendations that the Secretary will convey to those authorities to alleviate such problems; and state the views of the Council on unresolved or anticipated issues.

(d) *Contingencies.* Unpredictable events—such as unexpected resource surges or failures, fishing effort greater than anticipated, disruptive gear conflicts, climatic conditions, or environmental catastrophes—are best handled by establishing a flexible management regime that contains a range of management options through which it is possible to act quickly without amending the FMP or even its regulations.

(1) The FMP should describe the management options and their consequences in the necessary detail to guide the Secretary in responding to changed circumstances, so that the Council preserves its role as policy-setter for the fishery. The description enables the public to understand what may happen under the flexible regime, and to comment on the options.

(2) FMPs should include criteria for the selection of management measures, directions for their application, and mechanisms for timely adjustment of management measures comprising the regime. For example, an

FMP could include criteria that allow the Secretary to open and close seasons, close fishing grounds, or make other adjustments in management measures.

(3) Amendment of a flexible FMP would be necessary when circumstances inthe fishery change substantially, or when a Council adopts a different management philosophy and objectives.

§ 602.17 National Standard 7—Costs and Benefits.

(a) *Standard 7.* Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

(b) *Necessity of Federal management*—(1) *General.* The principle that not every fishery needs regulation is implicit in this standard. The Act does not require Councils to prepare FMPs for each and every fishery—only for those where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs. For example, the need to collect data about a fishery is not, by itself, adequate justification for preparation of an FMP, since there are less costly ways to gather the data (see § 602.13(d)(2)). In some cases, the FMP preparation process itself, even if it does not culminate in a document approved by the Secretary, can be useful in supplying a basis for management by one or more coastal States.

(2) *Criteria.* In deciding whether a fishery needs management through regulations implementing an FMP, the following general factors should be considered, among others:

(i) The importance of the fishery to the Nation and to the regional economy.

(ii) The condition of the stock or stocks of fish and whether an FMP can improve or maintain that condition.

(iii) The extent to which the fishery could be or is already adequately managed by States, by State/Federal programs, by Federal regulations pursuant to FMPs or international commissions, or by industry self-regulation, consistent with the policies and standards of the Act.

(iv) The need to resolve competing interests and conflicts among user groups and whether an FMP can further that resolution.

(v) The economic condition of a fishery and whether an FMP can produce more efficient utilization.

(vi) The needs of a developing fishery, and whether an FMP can foster orderly growth.

(vii) The costs associated with an FMP, balanced against the benefits (see paragraph (d) of this section as a guide).

(c) *Alternative management measures.* Management measures should not impose unnecessary burdens on the economy, on individuals, on private or public organizations, or on Federal, State, or local governments. Factors such as fuel costs, enforcement costs, or the burdens of collecting data may well suggest a preferred alternative.

(d) *Analysis.* The supporting analyses for FMPs should demonstrate that the benefits of fishery regulation are real and substantial relative to the added research, administrative, and enforcement costs, as well as costs to the industry of compliance. In determining the benefits and costs of management measures, each management strategy considered and its impacts on different user groups in the fishery should be evaluated. This requirement need not produce an elaborate, formalistic cost/benefit analysis. Rather, an evaluation of effects and costs, especially of differences among workable alternatives including the status quo, is adequate. If quantitative estimates are not possible, qualitative estimates will suffice.

(1) *Burdens.* Management measures should be designed to give fishermen the greatest possible freedom of action in conducting business and pursuing recreational opportunities that are consistent with ensuring wise use of the resource and reducing conflict in the fishery. The type and level of burden placed on user groups by the regulations need to be identified. Such an examination should include, for example: capital outlays; operating and maintenance costs; reporting costs; administrative, enforcement, and information costs; and prices to consumers.

Management measures may shift costs from one level of government to another, from one part of the private sector to another, or from the government to the private sector. Redistribution of costs through regulations is likely to generate controversy. A discussion of these and any other burdens placed on the public through FMP regulations should be a part of the FMP's supporting analyses.

(2) *Gains.* The relative distribution of gains may change as a result of instituting different sets of alternatives, as may the specific type of gain. The analysis of benefits should focus on the specific gains produced by each alternative set of management measures, including the status quo. The benefits to society that result from the alternative management measures should be identified, and the level of gain assessed.

APPENDIX A TO SUBPART B—EXPLANATORY MATERIAL

OVERVIEW

The guidelines allow for innovative policy evolution in response to new social or economic circumstances, and set out the benchmarks of current fishery management policy under the Act. With responsible management of a valued national resource as the goal, NOAA believes the guidelines should supply the Councils, as fishery management planners, a means to assess their work in developing and documenting their decisions. To that end, certain sections of the guidelines specifically address requirements and options for contents of an FMP, supplementing and drawing into sharper focus provisions of § 602.3 (Contents of Fishery Management Plans), currently in effect. These sections are usually indicated by the paragraph heading "analysis," within which is given more detailed guidance as to the kind of discussion and examination that an FMP should contain to demonstrate consistency with the standard in question. Words within these sections were carefully chosen to convey levels of effort and information commensurate with need (e.g., "consider," "take into account," "explain," "discuss," "examine," "analyze," "identify").

Fishery management decisions affect the fishing industry, the government and the individual taxpayer/consumer. Members of industry, citizens, and those responsible for implementing a fishery management regime need to know the reasons for decisions that affect them. Thus, it is important that certain issues (particularly those that are controversial) undergo enough examination and discussion to illuminate the options, demonstrate the rationales, and justify the final choice of management regime. This implicit democratic principle of accountability in government underlies and reinforces the Secretary's statutory responsibility to make informed judgments regarding an FMP's consistency with the national standards. The principle is reflected in the philosophies of the National Environmental Policy Act (NEPA), the Regulatory Flexibility Act (FRA), the Paperwork Reduction Act (PRA) and Executive Order (E.O.) 12291—all of which seek accountability in regulatory action.

Section 602.2 contains a style guide, which explains the use of specific words to distinguish the advisory, explanatory, or obligatory nature of the guideline language, and presents other words within the precise context of the guidelines.

Section 602.10 makes it clear that FMPs in substantial compliance with the guidelines, the Act, and other applicable law must be approved. The guidelines are meant as a protection for everyone in the FMP system. Their acceptance and use are a matter of practical utility for the Councils and of public commitment of the agency to consistent application of the policies stated. As an aggregation of policies developed through creative Council responses to regional fishery management problems, they are a way of sharing the empirical knowledge gained over the life of the Act.

STANDARD 1

Maximum Sustainable Yield (MSY)

Past controversy concerning MSY has related to its adequacy as a goal to be achieved by management. As used in the Act, MSY is a baseline tool in the determination of OY. In recognizing that MSY represents the underlying biological rationale upon which most determinations of OY rest, the guidelines set forth a more flexible framework for its calculation. Recognition of the need for flexibility in approaching MSY and OY has come as a result of plan review experience and Council innovation in adapting these concepts to the characteristics of different fisheries.

It is clear that because the Act requires the MSY specification, every attempt should be made to specify it. The guidelines acknowledge that MSY may be derived from a number of formulas or models (depending on the level and type of information available), that the use of range for MSY is satisfactory, and that in some fisheries a numerical MSY is not essential in establishing an appropriate underlying biological basis for OY. NOAA believes that Congressional intent is served if OY rests, even in these cases, on the best directly relevant biological information available.

The guidelines permit adjustment of (deviation from) MSY prior to determining OY under certain conditions, provided that the adjustment is fully justified in terms of environmental, ecological, or biological data available for the management unit under consideration. One type of adjustment is illustrated by the concept of Acceptable Biological Catch (ABC), used by some Councils. Following from the guideline definition of MSY as a long-term average, ABC is an annually determined catch that may differ from MSY for biological reasons—lower or higher to allow for fluctuating recruitment. It may be set lower than MSY to rebuild overfished stocks, or to be conservative when there is inadequate data on the status of the stocks.

Other types of adjustment to MSY have been made to allow for the influence of environmental factors. For example, the Gulf of Mexico shrimp MSY is adjusted annually through the use of an environmental calculation involving water flow and temperature characteristics. This fishery also illustrates that the biological resiliency and high fecundity of some stocks may allow OY to become a descriptive statement, equivalent—for all practical purposes—to MSY: OY in the Gulf shrimp FMP is equal to all the shrimp harvested under the FMP's management measures. Another instance where stock characteristics influence the determination of OY directly (making a numerical calculation of MSY immaterial) is the stone crab FMP, in which OY is all the stone crab caught with a minimum claw size. (Descriptive OYs can be converted into an annual numerical estimation for purposes of deriving TALFF, and for other reasons.) In cases where specification of MSY may not be technically possible because of lack of assessment data—such as might occur in an unutilized resource for which a fishery suddenly develops or in species that are minor components of mixed species fisheries—the OY still must be derived from biological information, as for example, the proportional abundance of associated species.

Overfishing

Overfishing is a relative term; it cannot be defined in isolation from its biological, economic, or ecological consequences, nor from its relationship to given management objectives. The prevention of overfishing has as its goal the protection of a stock's general reproductive capacity and its productivity in terms of maintaining an adequate supply of catchable fish.

The guidelines state that significant downward trends in spawing stock size and in average annual recruitment to the fishery may signal that overfishing is occurring. Recruitment is the process of adding new fish to the catchable population by the growth of smaller fish, or movement of fish into a fishing area from an unfished area. For an individual fish, recruitment occurs when the fish becomes large enough to be, in some degree, vulnerable to capture by the fishing gear used in the fishery. Thus, one refers to "recruitment to the fishery" to indicate the process of becoming catchable or becoming a recruit.

Ascertaining when these downward trends in stock size and recruitment have been established is a judgment based on information gained over time from scientific stock assessment, from harvesters and processors (through logbooks, catch samples, interviews, weigh-out slips, etc.), and from other sources such as aerial surveys or hydroacoustic data. NOAA also recognizes that a decline in stock size or abundance may occur independent of fishing pressure and that adverse changes in essential habitat may increase the risk that fishing effort will contribute to a stock collapse.

The guidelines specify that an FMP should explain how its conservation and management measures will prevent overfishing, including a program for rebuilding the stock if it has been diminished below a desired level. They also indicate that even if fishing pressure were not the cause of the problem, the Act limits the authority of the Councils in addressing the other causes. The only direct control available under the Act, under any circumstances, is to reduce fishing mortality. These controls might include, for example, establishment of catch quotas, closed seasons, closed areas, limits on mesh size, limited vessel days, and limits on vessels entering the fishery.

Fishing can produce a variety of effects on local and areawide abundance, availability, size, and composition of a stock. Some of these effects have been called "overfishing"; however, the guidelines state that these effects are not "overfishing" under standard 1, and that a Council may recommend conservation and management measures to prevent or permit these effects, depending on the objectives of a particular FMP. These "permissible" types of overfishing have been called "growth," "localized," and "pulse" overfishing.

Growth overfishing occurs when fishing pressure or some other factor results in the taking of too many fish before they have reached their optimum size for harvest. It may be the result of a planned attempt to harvest preferentially because of a demand for a smaller product, a high discard rate of a non-target species, faulty fishing practices, or heavy fishing pressure. Growth overfishing may be discouraged or disallowed by regulating mesh sizes or imposing area closures, to force fishing on larger or more marketable fish, as in the cases of butterfish, surf clams, or Gulf of Mexico shrimp.

Localized overfishing occurs when small portions of a fishery are temporarily overfished at a particular point in space and time. It can occur in reef fish fisheries when fishing pressure causes a temporary denuding of a particular reef. However, the chief characteristic of this type of overfishing is its temporary nature (i.e., the remainder of the stock of fish can repopulate the overfished portion).

Pulse overfishing can be tolerated under certain conditions. For example, it may be desirable for economic and social reasons in a specific fishery to allow the taking of a given amount of fish in a short time, and then let the stock rest for a period. Extra care should be taken so that pulse fishing does not result in serious long-term depletion.

As management regimes become more comprehensive, the interrelationships of fishing pressures on target and nontarget (both major and minor) species will have to be addressed more directly. NOAA believes that rational management of any multi-species fishery includes acknowledging the fact that overharvesting minor subcomponents may be unavoidable. The guidelines allow such overharvesting if the benefits are analyzed, the individual populations within a management unit so affected are identified, and an assessment of the risk of the species reaching a "threatened" or "endangered" status is made so that Council action will not cause any stock component to require protection under the Endangered Species Act.

Whether to allow any type of overfishing will continue to be argued among economists, biologists, industry representatives, and environmentalists. The policy question centers on whether the primary responsibility under the Act is to the resource or to the users of the resource, on the "wise use"/preservation dichotomy inherent in the word "conservation," and on the tension between risk and predictability. NOAA believes that the overfishing sections of the guidelines are responsive to the findings of the Act, particularly when read in conjuction with the standard 6 guideline provisions for buffers, reserves, and framework plan flexibility.

Optimum Yield (OY)

NOAA believes it important to keep the distinction clear between the two separate parts of standard 1: To prevent overfishing, and to achieve OY. The guidelines are written such that overfishing is an intrinsic limitation on OY; it is built into the OY determination, yet maintains a separate identity as a prohibition. For example, exceeding OY does not constitute overfishing when the fishery is not depressed. On the other hand, exceeding OY may constitute overfishing when the margins of tolerance are low. (Buffers to protect against overfishing because of uncertainty in estimating stock size or domestic harvest may be established in the form of reserves or a reduced OY.)

Whether exceeding OY is overfishing is a separate issue from continual harvest at a level above a fixed-value OY. The latter violates the other half of the standard (which is to achieve OY), whether or not overfishing is the result. Standard 1 may be violated from either side of the OY equation—if the level of harvest is continually above, or below, a fixed-value OY. NOAA believes that the Act requires that an attempt be made to achieve OY on an annual basis year after year, though recognizing that this may not always happen.

The guidelines also state that in the case of a mixed species fishery, the OY for incidental species may be a function of the directed catch, or absorbed into an OY for related species.

NOAA believes that achievement of OY includes giving foreign fishing vessels reasonable opportunity to harvest that portion of the OY that will not be harvested by vessels of the United States (OY minus DAH, called the total allowable level of foreign fishing—TALFF). However, nothing precludes Councils from setting OY equal to DAH (effectively eliminating TALFF), if circumstances warranting it are documented. NOAA has written the guidelines to allow international economic considerations to influence the size of TALFF through adjustment of OY.

STANDARD 2

Application of this standard affects the operation of all the other standards. The level of information influences the establishment of MSY, OY, and management unit composition; it underlies determinations of allocations, judgments of efficiency, adjustments for variations and contingencies, and evaluations of costs and benefits. The guidelines address the questions of timeliness, opposing bodies of opinion, and practical utility of the information specified, and emphasize the continuing need for information for monitoring and in-season adjustment decisions under a flexible management regime. A voluntary system of data collection is permissible, but requires a justification under the Paperwork Reduction Act, and is not covered under the Act's confidentiality provision. (Under the NOAA data security system, all individually collected fishery data are treated internally with the same degree of protection.) It is acceptable to collect data within State boundaries when needed for proper implementation of n FMP, but duplication of effort should be voided. Successful data collection depends on the protection of confidential data, the public trust in that protection, and the public perception of the valid uses of those data. The validity of the entire process may hinge on the cooperative attitudes of constituents, the research community, and the relevant governmental institutions.

STANDARD 3

Standard 3's principle of comprehensive management works well with standard 7's principle of avoiding duplication. The emphasis in the revision is on the scope, composition, and unity of the management unit, and on coordination and cooperation rather than on potential jurisdictional tension. NOAA believes that range-wide planning should encourage active State participation in the planning process, and that such planning will provide clear direction to the States as to what is needed to implement the proposed management regime effectively. This is consistent with Council practice; the result should be greater compatibility between Federal and State management measures.

Because the potential for incompatibility does exist, however, the guidelines require an FMP to discuss the interrelationship between State management activities and the proposed Federal regime. Federal regulations supersede any conflicting State regulations of EEZ fishing (F/V American Eagle v. Alaska, No. 2227 (Alaska, Nov. 21, 1980)). State landing laws and other forms of indirect regulation of EEZ fishing may be affected by implementing an FMP. The required analysis focuses attention on these impacts and on the effect of inconsistent State action on attaining the objectives of the FMP. This latter discussion will assist in determining Secretarial responsibilities under section 306(b) of the Act.

Standard 3 calls for management of a "stock" throughout its range. NOAA feels that the use of the words "stock," "fishery," and "management unit" is significant, and has endeavored to use the appropriate term in the guidelines. A stock may be larger than the fishery, as is the case when only a portion of the stock is actively fished. A fishery may be larger than a stock, when more than one stock is fished together. The management unit may ignore a portion of a fishery or stock when it includes a transboundary fishery or when a minor portion of the unit is fished within the area of authority of another Council. Examples are given of the perspectives around which a management unit may be organized.

STANDARD 4

To assist Councils in making what are usually the most controversial decisions within an FMP, NOAA has tried to confront the human issues surrounding fishery management directly, consistent with its concern for the economic and social consequences of regulation.

The guidelines address the "discrimination among residents of different States" issue as an extension of the Federal "privilege and immunities" clause of the U.S. Constitution, which means that Councils may not rely on, nor incorporate within an FMP, a State law that discriminates against residents of a different State. Discrimination is a distinct concept from equity.

Fishery management is essentially a series of allocations among present users, between present and future users, between public and private interests. The guidelines define "allocation" for purposes of the standard as a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete groups of fishermen. Because only measures that meet the definition will be judged against the standard, this is a critical and sensitive differentiation.

Many management measures may have an *incidental* effect on the fishing privileges enjoyed by different groups of U.S. fishermen. Any quota has a distributive effect on present and future users through its impact on stock maintenance or rebuilding. Area closures may cause practical difficulties for smaller vessels or those located far from open areas. Seasonal quotas create difficulties for those whose economics of operation do not permit a long period of inactivity.

Direct allocations, by contrast, have been made by the several Councils in a variety of FMPs in the past: Quotas by classes of vessels (Atlantic groundfish), quotas for commercial and recreational fishermen (Atlantic mackerel), different fishing seasons for recreational and commercial fishermen (salmon), assignment of ocean areas to different gears (stone crab), and limiting permits to present users (surf clam). These direct allocations were approved under standard 4 because the Councils complied with the three statutory criteria of the standard in constructing their allocation schemes.

The guideline's definition is an attempted middle ground between all measures affecting fishing practices and measures designated as allocations in an FMP. The distribution must be direct and deliberate, but a Council could not disclaim an intent to allocate through a measure that had obvious and inevitable allocative effects.

NOAA believes that the required analysis of allocations and alternative schemes considered—including the status quo—will help to focus attention on the existing distribution of privileges and the alteration of that distribution which Federal management will impose. Each FMP should contain the Council's judgment on fairness and equity, conservation promotion, and possible monopolistic or oligopolistic effects of the proposed allocations.

The guidelines link "fairness" with FMP objectives and OY and acknowledge that fishing rights of treaty Indians and aboriginal Americans should be factored into Council judgments. Rational use of the resource is suggested as one way an allocation scheme may promote conservation. A more visible conservation purpose is illustrated by the moratorium on entry of new vessels into the surf clam fishery, initiated to mitigate a resource crisis in a stock.

STANDARD 5

NOAA believes that, for purposes of standard 5, efficiency can be defined as the ability to produce a desired effect or product (or achieve an objective) with a minimum of effort, costs, or misuse of valuable biological and economic resources. In other words, Councils should choose management measures that achieve the FMP's objectives with minimum cost and burdens on society. NOAA believes that particular care should be taken when considering management of common property resources—where intensive individual market actions risk the "tragedy of the commons," a concept that comprises damage not only to the individual fisherman, but to the very resource on which he depends. Where there are no property rights, the role of government takes on the dimension of stewardship. NOAA also believes that managing at least cost to society and managing at least cost to the fisherman are not mutually exclusive. NOAA reads standards 5 and 7 together; to minimize costs of regulating also means to minimize costs to the industry of compliance.

The guidelines also recognize the difficulty inherent in reconciling particular economic and social needs of industry participants and consumers with this goal of efficiency. For example, maximizing employment opportunities by allowing continued overcapitalization instead of reducing effort might be considered inefficient in terms of an economic goal, but not necessarily in terms of a social goal. Or, when it is necessary to preserve a subsistence way of life or enjoyment of recreational fishing, application of the efficiency standard may not be appropriate. Councils thus may have to choose between—or rank—competing objectives.

NOAA believes that an FMP should not restrict the use of productive and cost-effective techniques of harvesting, processing or marketing, unless such restriction is necessary to achieve the conservation or social objectives of the FMP. For example, the Pacific salmon FMP provides for use of a barbless hook to decrease mortality of sublegal coho and chinook. The high seas salmon FMP requires "heads on" landing for fin-clipped coho and chinook to insure recovery of coded wire tags used to establish a needed distribution data base. In both cases, reduction in efficiency was outweighed by the conservation benefit.

Administrative efficiency can be a factor in choosing between management regime alternatives, as well. The Gulf of Mexico shrimp FMP's cooperative Texas closure, for example, increased the effectiveness and efficiency of enforcement.

NOAA chose to address the questions surrounding "limited access" in the context of standard 5 rather than in standard 4, even though limited access, by its nature, is an allocative measure. In fact, the guidelines caution that any limited access system must be consistent with section 303(b)(6) of the Act and the standard 4 guidelines. NOAA believes that placement within standard 5 puts the emphasis more appropriately on concepts of economic efficiency in achieving OY rather than on the contentious issues of right of entry, or limit on effort, per se. The placing of limited access within the standard 5 context does not imply, however, that efficiency is always attained by limited access, nor that limited access is the most desirable method of attaining efficiency, nor that efficiency is the only purpose for limited access, nor that limited entry has always resulted in the benefits listed in the guidelines.

STANDARD 6

NOAA recognizes that each fishery exhibits its unique uncertainties, and that the unpredictable nature of the fishery resource caused by vulnerability to changing conditions and unforeseeable events makes long-term planning difficult. Long-term objectives are more easily attainable in the more stable fisheries. The guidelines clarify that it is possible to compensate for variations by establishing buffers; protection against contingencies is urged through use of flexibility in the regulatory process.

STANDARD 7

The principles of standard 7 coincide with many earnest and recently intense efforts of NOAA and the Councils to streamline the FMP process. As more FMPs have come on line, the costs of enforcement and of collecting data for monitoring, while reduced per FMP, have increased in total. The rising costs of fishing, due in part to dependence on petroleum-based products, has intensified the need to consider the impact of potentially burdensome regulations. Thus, it has become necessary to be more precise in evaluating the costs to industry and to government, to support comprehensive management, and to work toward a flexible regulatory structure.

NOAA believes that the requirements of E.O. 12291 and other regulatory reform legislation quite appropriately focus attention on the threshold question of the actual need for management through regulation. Even when a Council believes there is an advantage to managing a fishery, growing public concern over excessive Federal regulation of private activities and over the need to reduce the cost of government emphasizes the responsiblity to ensure that FMPs are developed only for those fisheries where the need for Federal regulation can be clearly demonstrated. For these reasons, the guidelines propose criteria to assist in making these threshold decisions.

NOAA recognizes that the wide diversity of fisheries and of management objectives increases the difficulties of devising a quantitative cost/benefit analysis for fishery management measures. However, under the guidelines, the types of analyses suggested under standards 4 and 5 would be the first steps in evaluating relative distribution of gains and burdens produced by each alternative set of management measures. While weight of intangibles such as recreational enjoyment, habitat protection, or social dislocation often cannot be expressed in dollar terms, NOAA believes they should be considered and described as explicitly as possible.

[48 FR 7408, Feb. 18, 1983, as amended at 53 FR 24645, June 29, 1988]

PART 603—CONFIDENTIALITY OF STATISTICS

Sec.
603.1 Purpose.
603.2 Definitions.
603.3 Types of statistics covered.
603.4 Collection and maintenance of statistics.
603.5 Access to statistics.
603.6 Controls system.
603.7 Release of statistics.

AUTHORITY: 5 U.S.C. 301; 16 U.S.C. 1853(d).

SOURCE: 44 FR 70481, Dec. 7, 1979, unless otherwise noted.

§ 603.1 Purpose.

The purpose of this Part 603 is to prescribe procedures to preserve the confidentiality of any statistics submitted to the Secretary by any person in compliance with a requirement under a preliminary fishery management plan (PMP) or a fishery management plan (FMP).

§ 603.2 Definitions.

The terms used in this part shall have the same meaning as ascribed to them in section 3 of the Fishery Conservation and Management Act of 1976, as amended (16 U.S.C. 1801 *et seq.*) and part 601 of this chapter.

Aggregate or summary form, with respect to data, means data or information submitted by three or more persons that have been summed or assembled in such a manner so as not to reveal, directly or indirectly, the identity or business of any such person.

Assistant Administrator means the Assistant Administrator for Fisheries or his designee.

"Data", "statistics", and *"information"* are used interchangeably.

§ 603.3 Types of statistics covered.

This part applies to all information required to be submitted by any PMP or FMP or any regulation promulgated to implement a PMP or FMP, including, but not limited to: Information regarding the type and quantity of fishing gear used; catch by species in numbers of fish or weight thereof; areas in which fishing was engaged; time of fishing; number of hauls; and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors.

§ 603.4 Collection and maintenance of statistics.

(a) *General.* (1) All statistics required to be submitted to the Secretary under a PMP or FMP shall be provided to the Assistant Administrator.

(2) After receipt of the statistics submitted to the Assistant Administrator, the appropriate NMFS official shall delete all identifying particulars from the statistics at the first practicable opportunity consistent with the needs of the NMFS and good scientific practice.

(3) Appropriate safeguards as specified by NOAA Directives, or other NOAA or NMFS internal procedures, shall apply to the collection and maintenance of all statistics, whether separated from identifying particulars or not, so as to ensure their confidentiality.

(b) *Collection agreements with States.* (1) The Assistant Administrator may enter into an agreement with a State authorizing the State to collect statistics on behalf of the Secretary.

(2) It is the policy of NMFS that NMFS will not enter into a cooperative collection agreement with a State unless the State has authority to protect the statistics from disclosure to the public in a manner similar to that of the Federal government, and in a manner consistent with these regulations.

§ 603.5 Access to statistics.

(a) *NOAA and NMFS personnel.* Statistics submitted as a requirement of a PMP or FMP and which will reveal the business or identity of the submitter shall only be accessible to:

(1) Personnel within NMFS responsible for the collection, processing, and storage of the statistics;

(2) Personnel within NMFS performing research that requires routine access;

(3) Other NOAA and NMFS personnel on a demonstrable need-to-know basis; and

(4) NMFS contractors that require access in order to perform functions authorized by the Federal contract.

(b) *State personnel.* (1) State access to, and use of, those statistics collected will depend upon the State's authority to require collection of the statistics on its own behalf.

(2) If the State has authority to collect the statistics in question but has no agreement with the Assistant Administrator, the State shall not have access to statistcs covered by this part which are submitted to the Assistant Administrator.

(c) *Prohibitions.* Persons having access to these data are prohibited from unauthorized use or disclosure, and are subject to the provisions of 18 U.S.C. 1905 and NOAA/NMFS internal procedures.

§ 603.6 Controls system.

(a) The Assistant Administrator shall institute a control system to protect the confidentiality of statistics submitted in compliance with a PMP or FMP. The control system will:

(1) Identify those persons who have routine access to the statistics;

(2) Contain procedures to identify non-routine users and their use of the data; and

(3) Provide for safeguarding the data.

(b) This system will require that all persons who have access to the data be informed of the confidentiality of the data. These persons shall be required to sign a statement that they:

(1) Have been informed that the data are confidential, and

(2) Have reviewed and are familiar with the procedures to protect data confidentiality.

§ 603.7 Release of statistics.

(a) The Assistant Administrator shall not disclose to the public any statistics required to be submitted under a PMP or FMP in other than aggregate or summary form except as required by court order. Disclosure as required by court order shall be made only after approval of the NOAA Office of General Counsel.

(b) All requests for statistics submitted in response to a requirement of a PMP or FMP shall be processed consistent with NOAA Freedom of Information Act (FOIA) regulations (15 CFR Part 903), NOAA Directives Manual 21-25, Department of Commerce Administrative Orders 205-12 and 205-14, and 15 CFR Part 4.

(1) The Assistant Administrator shall have the authority to issue initial denials of requests subject to the FOIA for statistics submitted in response to a PMP or FMP. Initial denials shall indicate that exemption 3 of FOIA (5 U.S.C. 552(b)(3)) is the basis for denial, making specific reference to section 303(d) of the Act and reciting in its entirety the first sentence of that section. Furthermore, citing this regulation, the denial shall indicate that the application of section 303(d) is nondiscretionary and shall refer specifically to the appropriate portion of the applicable PMP, FMP, or implementing regulation that required the submission of the requested statisitcs. Exemption (b)(4) (5 U.S.C. 552(b)(4)), as well as other applicable FOIA ex-

emptions, may be cited in addition, where appropriate.

(2) Appeals from initial denials should be addressed to the Administrator of NOAA, Department of Commerce, Washington, D.C. 20230. The Administrator shall not make a discretionary relase of statistics unless, upon review, it is determined that the Assistant Administrator improperly applied exemption (b)(3) to the requested statistics. In such cases the Administrator will instruct the Assistant Administrator to release the statistics to the requestor.

PART 611—FOREIGN FISHING

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611.61 Atlantic billfish and sharks fishery.
611.62 Royal red shrimp fishery.

Subpart E—Northeast Pacific Ocean

611.70 Pacific coast groundfish fishery.

Subpart F—Western Pacific Ocean

611.80 Seamount groundfish fishery.
611.81 Pacific billfish, oceanic sharks, wahoo, and mahimahi fishery.
611.82 Precious coral fishery.

Subpart G—North Pacific Ocean and Bering Sea

611.90 General provisions.
611.91 [Reserved]
611.92 Gulf of Alaska groundfish fishery.
611.93 Bering Sea and Aleutian Islands Groundfish fishery.
611.94 Snail fishery.

AUTHORITY: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

SOURCE: 43 FR 59293, Dec. 19, 1978, unless otherwise noted.

EDITORIAL NOTE: For a nomenclature change document affecting Part 611 see 53 FR 24653, June 29, 1988.

Subpart A—General

SOURCE: 50 FR 34979, Aug. 28, 1985, unless otherwise noted.

§ 611.1 Purpose and scope.

(a) This part governs all foreign fishing under the Magnuson Fishery Conservation and Management Act. Foreign vessels which are not operated for profit and are conducting recreational fishing only must comply with the provisions of this section, § 611.2, § 611.6(a)(1), applicable portions of § 611.7, and § 611.15.

(b) For additional provisions governing the Japanese harvest of salmonids, see the International Convention for the High Seas Fisheries of the North

Pacific Ocean (TIAS 2786, as amended in 1962, TIAS 5385 and in 1978, TIAS 9242).

(c) Other U.S. laws and regulations apply to foreign vessels fishing in the U.S. FCZ, such as the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361, and 50 CFR Part 216).

[50 FR 34979, Aug. 28, 1985, as amended at 53 FR 13412, Apr. 25, 1988]

§ 611.2 Definitions.

In addition to the definitions contained in the Magnuson Act, and unless the context requires otherwise, in this Part 611, the terms used have the following meaning (some definitions in the Magnuson Act have been repeated here to aid fishermen in understanding the regulations):

Agent means a person appointed and maintained within the United States who is authorized to receive and respond to any legal process issued in the United States to an owner and/or operator of a vessel operating under a permit and of any other vessel of that nation fishing subject to the jurisdiction of the United States. Any diplomatic official accepting such an appointment as designated agent waives diplomatic or other immunity in connection with such process.

Allocated species means any species or species group allocated to a foreign nation under § 611.21 for catching by vessels of that nation.

Anadromous species means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters, including but not limited to—

King salmon (*Oncorhynchus tshawytscha*)
Pink salmon (*Oncorhynchus gorbuscha*)
Chum salmon (*Oncorhynchus keta*)
Sockeye salmon (*Oncorhynchus nerka*)
Silver salmon (*Oncorhynchus kisutch*)
Rainbow (Steelhead) trout (*Salmo gairdneri*)
Atlantic salmon (*Salmo salar*)
Striped bass (*Morone saxatilis*)

Assistant Administrator means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration (NOAA) or a designee.

Authorized officer means—

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating to enforce the Magnuson Act; or

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Authorized species means any species or species group which a foreign vessel is authorized to retain in a joint venture by a permit issued under activity code 4 as described by § 611.3(c).

Center Director means the Director of one of the four NMFS Fisheries Centers described in Table 1 of Appendix A to this subpart or a designee.

Coast Guard Commander means one of the commanding officers of the Coast Guard units specified in Table 1 of Appendix A to this subpart or a designee.

Continental shelf fishery resources (CSFR) means the following plus any species added by the Secretary under section 3(4) of the Magnuson Act:

COELENTERATA

Bamboo coral (*Acanelia* spp.)
Black coral (*Antipathes* spp.)
Gold coral (*Callagorgia* spp.)
Precious red coral (*Corallium* spp.)
Bamboo coral (*Keratoisis* spp.)
Gold coral (*Parazoanthus* spp.)

CRUSTACEA

Tanner crab (*Chionoecetes tanneri*)
Tanner crab (*Chionoecetes opilio*)
Tanner crab (*Chionoecetes angulatus*)
Tanner crab (*Chionoecetes bairdi*)
King crab (*Paralithodes camtschatica*)
King crab (*Paralithodes platypus*)
King crab (*Paralithodes brevipes*)
Lobster (*Homarus americanus*)
Dungeness crab (*Cancer magister*)
California king crab (*Paralithodes californiensis*)
California king crab (*Paralithodes rathbuni*)
Golden king crab (*Lithodes aequispinus*)
Northern stone crab (*Lithodes maja*)
Stone crab (*Menippe mercenaria*)
Deep-sea red crab (*Geryon quinquedens*)

MOLLUSKS

Red abalone (*Haliotis rufescens*)
Pink abalone (*Haliotis corrugata*)

Japanese abalone (*Haliotis kamtschatkana*)
Queen conch (*Strombus gigas*)
Surf clam (*Spisula solidissima*)
Ocean quahog (*Arctica islandica*)

SPONGES

Glove sponge (*Spongia cheiris*)
Sheepswool sponge (*Hippiospongia lachne*)
Grass sponge (*Spongia graminea*)
Yellow sponge (*Spongia barbera*)

Council means any of the Regional Fishery Management Councils established under the Magnuson Act.

Designated representative means the person appointed by a foreign nation and maintained within the United States who is responsible for transmitting information to and submitting reports from vessels of that nation and establishing observer transfer arrangements for vessels in both directed and joint venture activities.

Directed fishing means any fishing by the vessels of a foreign nation for allocations of fish granted that nation under § 611.21.

Discard or *discarded* means to release or return fish to the sea, whether or not such fish are brought fully aboard a fishing vessel.

Exclusive economic zone (EEZ) means the zone established by Presidential Proclamation 5030, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fish (when used as a noun) includes finfish, elasmobranches, mollusks, crustaceans, and all other forms of marine animal or plant life, except marine mammals, birds, and highly migratory species.

Fish (when used as a verb) means to engage in "fishing," as defined below.

Fish over which the United States exercises exclusive fishery management authority means—

(a) All fish within the EEZ;

(b) All anadromous species beyond the EEZ, except when they are within any foreign nation's territorial sea or EEZ (or equivalent), to the extent that such sea or zone is recognized by the United States; and

(c) All Continental shelf fishery resources beyond the EEZ.

Fishery means—

(a) One or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographic, scientific, technical, recreational, or economic characteristics, or method of catch; or

(b) Any fishing for such stocks.

EEZ means the area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing, or *to fish*, means any activity, other than scientific research conducted by a scientific research vessel, which involves—

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (a), (b), or (c) of this definition.

Fishing vessel means any boat, ship, or other craft which is used for, equipped to be used for, or of a type normally used for, fishing.

Foreign fishing means fishing by a foreign fishing vessel.

Foreign fishing vessel (*FFV*) means any fishing vessel other than a vessel of the United States, except those foreign vessels engaged in recreational fishing, as defined in this section.

Gear conflict means any incident at sea involving one or more fishing vessels (a) in which one fishing vessel or its gear comes into contact with another vessel or the gear of another vessel, and (b) which results in the loss of, or damage to, a fishing vessel, fishing gear, or catch.

Governing International Fishery Agreement (*GIFA*) means an agreement between the United States and a foreign nation or nations under Section 201(c) of the Magnuson Act.

Greenwich mean time (*GMT*) means the local mean time at Greenwich, England. All times in this part are GMT unless otherwise specified.

Highly migratory species means the species of tuna which in the course of their life cycle spawn and migrate over great distances of the ocean, including, but not limited to—

Albacore (*Thunnus alalunga*)
Bigeye tuna (*Thunnus obsesus*)
Bluefin tuna (*Thunnus thynnus*)
Skipjack tuna (*Euthynnus pelamis*)
Southern bluefin tuna (*Thunnus maccoyii*)
Yellowfin tuna (*Thunnus albacares*)

International radio call sign (*IRCS*) means the unique radio identifier assigned a vessel by the appropriate authority of the flag state.

Joint venture means any operation by a foreign vessel assisting fishing by U.S. fishing vessels, including catching, scouting, processing and/or support. (A joint venture generally entails a foreign vessel processing fish received from U.S. fishing vessels and conducting associated support activities.)

Magnuson Act means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

NMFS means National Marine Fisheries Service, NOAA.

NOAA means the National Oceanic and Atmospheric Administration, Department of Commerce.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Optimum yield (*OY*) means the amount of fish—

(a) Which will provide the greatest overall benefit to the United States, with particular reference to food production and recreational opportunities; and

(b) Which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor.

Owner, with respect to any vessel, means any person who owns that vessel or any charterer, whether bareboat, time, or voyage; and any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel.

Processing means any operation by an FFV to receive fish from foreign or U.S. fishing vessels and/or the preparation of fish, including but not limited to cleaning, cooking, canning, smoking, salting, drying, or freezing, either on the FFV's behalf or to assist other foreign or U.S. fishing vessels.

Product recovery rate (*PRR*) means a ratio expressed as a percentage of the weight of processed product divided by the round weight of fish used to produce that amount of product.

Prohibited species, with respect to any vessel, means any species of fish which that vessel is not specifically allocated or authorized to retain, including fish caught or received in excess of any allocation or authorization.

Recreational fishing means any fishing from a foreign vessel not operated for profit and not operated for the purpose of scientific research. It may not involve the sale, barter, or trade of part or all of the catch (see § 611.15).

Regional Director means the Director of one of the five NMFS regions described in Table 1 of Appendix A to this subpart or a designee.

Round weight means the weight of the whole fish.

Scouting means any operation by a vessel exploring (on the behalf of an FFV or U.S. fishing vessel) for the presence of fish by visual, acoustic, or other means which do not involve the catching of fish.

Secretary means the Secretary of Commerce or a designee.

Sexual harassment means any unwelcome sexual advance, request for sexual favors, or other verbal and physical conduct of a sexual nature which has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Commonwealth of the Northern

Mariana Islands, and any other Commonwealth, territory, or possession of the United States.

Support means any operation by a vessel assisting fishing by foreign or U.S. fishing vessels, including—

(a) Transferring fish or fish products;

(b) Transporting fish over which the United States exercises exclusive fishery management authority, or fish products made from such fish; or

(c) Supplying water, fuel, provisions, fishing equipment, fish processing equipment, or other supplies to a fishing vessel.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any fishery for which a fishery management plan prepared under Title III of the Magnuson Act or a preliminary fishery management plan prepared under section 201(h) of the Magnuson Act has been implemented.

U.S. observer or *observer* means any person serving in the capacity of an observer employed by NMFS, either directly or under contract, or certified as a supplementary observer by NMFS.

Vessel of the United States or *U.S. vessel* means—

(a) Any vessel documented under the laws of the United States;

(b) Any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*), and measuring less than 5 net tons; or

(c) Any vessel numbered under the Federal Boat Safety Act of 1971 and used exclusively for pleasure.

[50 FR 34979, Aug. 28, 1985, as amended at 53 FR 13412, Apr. 25, 1988; 53 FR 24646, June 29, 1988]

§ 611.3 Vessel permits.

(a) *General.* (1) Each FFV fishing under the Magnuson Act must have on board a completed permit form for a permit issued under this section, unless it is engaged only in recreational fishing.

(2) The Secretary of State may issue annual registration permits for FFV's fishing under the International Convention for the High Seas Fisheries of the North Pacific Ocean (TIAS 2786; amended in 1962, TIAS 5385; and in 1978, TIAS 9242) upon application from the foreign nations.

(3) Permits issued under this section do not authorize FFV's or persons to harass, capture, or kill marine mammals. No marine mammal may be taken in the course of fishing unless that vessel has on board a marine mammal certificate of inclusion issued under a general permit under the Marine Mammal Protection Act. Application procedures for permits to take marine mammals incidential to commercial fishing operations are contained in 50 CFR 216.24.

(b) *Responsibility of owners and operators.* The owners and operators of each FFV are jointly and severally responsible for compliance with the Magnuson Act, the applicable GIFA, this part, and any permit issued under the Magnuson Act and this part. The owners and operators of each FFV bear civil responsibility for the acts of their employees and agents constituting violations, regardless of whether the specific acts were authorized or even forbidden by the employer or principal, and regardless of knowledge concerning the occurrence.

(c) *Activity codes.* Permits to fish under a GIFA may be issued by the Assistant Administrator for the activities described below, but the permits may be modified by regulations of this part, and by the conditions and restrictions attached to the permit (see paragraphs (e)(1)(v) and (l) of this section). The Assistant Administrator may issue a permit for one of the activity codes 1, 2, or 3. The Assistant Administrator will issue a permit with the additional activity code 4 for FFV's authorized to assist U.S. fishing vessels in a joint venture. The activity codes are described as follows:

Activity code 1—Catching, scouting, processing and support.

Activity code 2—Processing, scouting and support.

Activity code 3—Support.

Activity code 4—Assisting U.S. fishing vessels as allowed by the other assigned code (joint venture).

(d) *Application.* (1) Applications for FFV permits must be submitted by each foreign nation to the Department of State. Application forms are available from OES/OFA, Department of State, Washington, D.C. 20520. The applicant should allow 90 days for review and comment by the public, involved governmental agencies, and appropriate Fishery Management Councils, and for processing before the anticipated date to begin fishing. The permit application fee must be paid at the time of application according to § 611.22.

(2) Applicants must provide complete and accurate information requested on the permit application form.

(3) Applicants for FFV's that will support U.S. vessels in joint ventures (activity code 4) must provide the additional information specified by the permit application form.

(4) Each foreign nation may substitute one FFV for another by submitting a new vessel information form and a short explanation of the reason for the substitution to the Department of State. Each substitution is considered a new application and a new application fee must be paid. NMFS will promptly process an application for a vessel replacing a permitted FFV that is disabled or decommissioned, once the Department of State has notified the appropriate Council(s) of the substituted application.

(e) *Issuance.* (1) Permits may be issued to an FFV by the Assistant Administrator through the Department of State after—

(i) The Assistant Administrator determines that the fishing described in the application will meet the requirements of the Magnuson Act and approves the permit application;

(ii) The foreign nation has paid the fees, including any surcharge fees; and provided any assurances required by the Secretary in accordance with the provisions of § 611.22;

(iii) The foreign nation has appointed an agent;

(iv) The foreign nation has identified a designated representative; and

(v) The general "conditions and restrictions" of receiving permits, as required by section 204(b)(7) of the Magnuson Act, and any "additional restrictions" attached to the permit for the conservation and management of fishery resources or to prevent significant impairment of the national defense or security interests, have been accepted by the nation issuing the FFV's documents.

(2) The Assistant Administrator will distribute blank permit forms to the designated representative while the application is being processed. The designated representative must ensure that each FFV receives a permit form and must accurately transmit the permit form and the contents of the permit to the FFV when it is issued. The Assistant Administrator may authorize the modification and use of the previous year's permit forms to be used on an interim basis in place of the current year's permit forms if the current forms were not made available to the designated representatives for timely distribution. The FFV owner or operator must accurately complete the permit form prior to fishing in the EEZ.

(3) A completed permit form must contain—

(i) The name and IRCS of the FFV and its permit number;

(ii) The permitted fisheries and activity codes;

(iii) The date of issuance and expiration date, if other than December 31; and

(iv) All conditions and restrictions, and any additional restrictions and technical modifications appended to the permit.

(4) Permits are not issued for boats which are launched from larger vessels. Any enforcement action which results from the activities of a launched boat will be taken against the permitted vessel.

(f) *Duration.* A permit is valid from its date of issuance to its date of expiration unless it is revoked or suspended or the nation issuing the FFV's documents does not accept amendments to the permit made by the Assistant Adminstrator in accordance with the procedures of paragraph (l). The permit will be valid for no longer than the calendar year in which it was issued.

(g) *Transfer.* Permits are not transferable or assignable. A permit is valid only for the FFV to which it is issued.

(h) *Display.* Each FFV operator must have a properly completed permit form available on board the FFV when engaged in fishing activities and must produce it at the request of an authorized officer or observer.

(i) *Suspension and revocation.* NMFS may apply sanctions to an FFV's permit by revoking, suspending, or imposing additional permit restrictions on the permit under Title 15 CFR Part 904 if the vessel is involved in the commission of any violation of the Magnuson Act, the GIFA, or this part; if an agent and a designated representative are not maintained in the United States; if a civil penalty or criminal fine imposed under the Magnuson Act has become overdue; or as otherwise specified in the Magnuson Act.

(j) *Fees.* Permit application fees are described at § 611.22.

(k) *Change in application information.* (1) The foreign nation must report in writing any change in the information supplied under paragraph (d) of this section to the Assistant Administrator within 15 calendar days after the date of the change. Failure to report a change in the ownership from that described in the current application within the specified time frame voids the permit, and all penalties involved will accrue to the previous owner.

(2) The Assistant Administrator may make technical modifications or changes in the permit application requested or reported by a nation, such as a change in radio call sign, processing equipment, or tonnage, which will be effective immediately.

(3) If, in the opinion of the Assistant Administrator, a permit change requested by a nation could significantly affect the status of any fishery resource, such request will be processed as an application for a new permit under this section.

(4) The Assistant Administrator will notify the designated representative of any revision which must be made on the permit form as the result of a permit change.

(5) The vessel owner or operator must record the modification on the permit form.

(l) *Permit amendments.* (1) The Assistant Administrator may amend a permit by adding "additional restrictions" for the conservation and management of fishery resources covered by the permit, or for the national defense or security if the Assistant Administrator determines that such interests would be significantly impaired without such restrictions. Compliance with the added "additional restrictions" is a condition of the permit. Violations of added "additional restrictions" will be treated as violations of this part.

(2) The Assistant Administrator may make proposed "additional restrictions" effective immediately, if necessary, to prevent substantial harm to a fishery resource of the United States, to allow for the continuation of ongoing fishing operations, or to allow for fishing to begin at the normal time for opening of the fishery.

(3) The Assistant Administrator will send proposed "additional restrictions" to each nation whose vessels are affected (via the Secretary of State), to the appropriate Councils, and to the Commandant of the Coast Guard. The Assistant Administrator will, at the same time, publish a notice of any significant proposed "additional restrictions" in the FEDERAL REGISTER. The notice will include a summary of the reasons underlying the proposal, and the reasons that any proposed "additional restrictions" are made effective immediately.

(4) The nation whose vessels are involved, the owners of the affected vessels, their representatives, the agencies specified in paragraph (l)(3) of this section, and the public may submit written comments on the proposed "additional restrictions" within 30 days after publication in the FEDERAL REGISTER.

(5) The Assistant Administrator will make a final decision regarding the proposed "additional restrictions" as soon as practicable after the end of the comment period. The Assistant Administrator will provide the final "additional restrictions" to the nation whose vessels are affected (via the Secretary of State) according to the procedures of paragraph (e) of this section. The Assistant Administrator will

include with the final "additional restrictions" to the nation, a response to comments submitted.

(6) "Additional restrictions" may be modified by following the procedures of paragraphs (l)(2) through (l)(5) of this section.

[50 FR 34979, Aug. 28, 1985, as amended at 53 FR 13412, Apr. 25, 1988]

§ 611.4 Vessel reports.

(a) The operator of each FFV must report the FFV's activities within the EEZ to the Coast Guard and NMFS as specified in this section.

(b) All reports required by this section must be in English and in the formats specified in the appendices. Reports should be delivered by private or commercial communications facilities to the appropriate Coast Guard commander, who will relay them to NMFS. Weekly reports may also be delivered directly to the appropriate NMFS Region or Center (Tables 1 and 2 of Appendix A to this subpart). (The required reports may be delivered to the closest Coast Guard communication station as indicated in Table 3 of Appendix A or other Coast Guard communication station *only if* adequate private or commercial communications facilities have not been successfully contacted.) Radio reports must be made via radiotelegraphy or Telex where available. In this section, a message is considered *transmitted* when its receipt is acknowledged by a communications facility and considered *delivered* upon its receipt by the offices of the appropriate Coast Guard commander, NMFS Regional Office, or NMFS Center identified in Appendix A. Reports required by this section may be submitted by the vessel's designated representative; however, the operator of the FFV is responsible for the correct and timely filing of all required reports.

(c) *Activity reports.* The operator of each FFV must report the FFV's movements and activities before or upon the event as specified in this paragraph and as illustrated in Appendix B to this subpart (EXCEPTION: § 611.81(d)). Each FFV report must contain the following information: The message identifier "VESREP" to indicate it is a vessel activity report, FFV name, international radio call sign (IRCS), date (month and day based on GMT), time (hour and minute GMT), position (latitude and longitude to the nearest degree and minute) where required, area (use fishing area code from Appendix C to this subpart) where required, the appropriate action code, confirmation codes where required, and the other information specified in paragraphs (c)(1) through (c)(11) of this section.

(1) *BEGIN.* Each operator must specify the date, time, position and area the FFV will actually BEGIN fishing in the EEZ and the species (by species code from Appendix D to this subpart), product (by product code from Appendix E to this subpart), and quantity of all fish and fish products (by product weight to the nearest hundredth of a metric ton) on board when entering the EEZ (action code BEGIN). The message must be *delivered* at least 24 hours before the vessel begins to fish.

(2) *DEPART.* Each operator must specify the date, time, position, and area the FFV will DEPART the EEZ to embark or debark an observer, to visit a U.S. port, to conduct a joint centure in internal waters, or to otherwise temporarily leave an authorized fishing area but not depart the seaward limit of the EEZ (action code DEPART). The message must be *transmitted* before the FFV departs the present fishing area and *delivered* within 24 hours of its transmittal.

(3) *RETURN.* Each operator must specify the date, time, position, and area the FFV will RETURN to the EEZ following a temporary departure, and the species (by species code from Appendix D to this subpart), product (by product code from Appendix E to this subpart), and quantity of all fish and fish products (by product weight to the nearest hundredth of a metric ton) on board which were received in a joint venture in internal waters (action code RETURN). The message must be *transmitted* before returning to the EEZ and *delivered* within 24 hours of its transmittal.

(4) *SHIFT.* Each operator must report each SHIFT in fishing area (as shown in Appendix C to this subpart) by specifying the date, time, and posi-

tion the FFV will start fishing, and the new area (action code SHIFT). The message must be *transmitted* before leaving the original area and *delivered* within 24 hours of its transmittal. If a foreign vessel operates within 20 nautical miles of a fishing area boundary, its operator may submit in one message the shift reports for all fishing area shifts occurring during one fishing day (0001-2400 GMT). This message must be transmitted prior to the last shift expected to be made in the day and *delivered* within 24 hours of its transmittal.

(5) *JV OPS.* Each operator must specify the date, time, position, and area at which the FFV will START joint venture operations (action code START JV OPS) or END joint venture operations (action code END JV OPS). These reports must be made in addition to other activity reports made under this section. Each message must be *transmitted* before the event and *delivered* within 24 hours of its transmittal.

(6) *TRANSFER.* The operator of each FFV which anticipates a support operation in which the FFV will receive fish or fisheries product must specify the date, time, position, and area the FFV will conduct the TRANSFER and the name and IRCS of the other FFV involved (action code TRANSFER). The message must be *transmitted* prior to the transfer and *delivered* within 24 hours of its transmittal. The movement of raw fish from a catching vessel or U.S. fishing vessel to a processing vessel and the return of nets or codends is not considered a transfer.

(7) *OFFLOADED.* Each operator must specify the date, time, position and area the FFV OFFLOADED fish or fisheries products TO another FFV in a transfer, the other FFV's name, IRCS, species (by species code from Appendix D to this subpart) and quantity of fish and fisheries products (by product code from Appendix E to this subpart and by product weight to the nearest hundredth of a metric ton) offloaded (action code OFFLOADED TO). The message must be *transmitted* within 12 hours after the transfer is completed and *delivered* within 24 hours of its transmittal and before the FFV ceases fishing in the EEZ.

(8) *RECEIVED.* Each operator must specify the date, time, position, and area the vessel RECEIVED fish or fisheries products FROM another FFV in a transfer, the other FFV's name, IRCS, species (by species code from Appendix D to this subpart) and quantity of fish and fisheries products (by product code from Appendix E to this subpart and by product weight to the nearest hundredth of a metric ton) received (action code RECEIVED FROM). The message must be *transmitted* within 12 hours after the transfer is completed and *delivered* within 24 hours of its transmittal and before the FFV ceases fishing in the EEZ.

(9) *CEASE.* Each operator must specify the date, time, position, and area the FFV will CEASE fishing in order to leave the EEZ (action code CEASE). The message must be *delivered* at least 24 hours before the FFV's departure.

(10) *CHANGE.* Each operator must report any CHANGE TO the FFV's operations if the position or time of an event specified in an activity report will vary more than five nautical miles or four hours from that previously reported, by sending a revised message inserting the word "CHANGE" in front of the previous report, repeating the name, IRCS, date, and time of the previous report, adding the word "TO" and the complete revised text of the new report (action code CHANGE TO). Changes to reports specifying an early beginning of fishing by an FFV or other changes to reports of paragraphs (c)(1) through (c)(9) must be transmitted and delivered as if the CHANGE report was the original message.

(11) *CANCEL.* Each operator wishing to CANCEL a previous report may do so by sending a revised message, and inserting the word "CANCEL" in front of the previous report's vessel name, IRCS, date, time and action code canceled (action code CANCEL). The message must be transmitted and delivered prior to the date and time of the event in the original message.

(d) The operator of an FFV will be in violation of paragraphs (c)(1) through (c)(9) of this section if the

FFV does not pass within five nautical miles of the position given in the report within four hours of the time given in the report.

(e) The notices required by this section may be provided for individual or groups of FFV's (on a vessel-by-vessel basis) by fleet commanders or other authorized persons. An FFV operator may retransmit reports on the behalf of another FFV, if authorized by that FFV's operator. This does not relieve the individual vessel operator of the responsibility of filing required reports. In these cases, the message format in Appendix B of this subpart should be modified so that each line of text under "VESREP" is a separate vessel report.

(f) *Weekly reports.* (1) The operator of each FFV in the EEZ must submit appropriate weekly reports through the nation's designated representative. The report must arrive at the address and time specified in paragraph (g) of this section. The reports may be sent by Telex, but a completed copy of the report form (see Appendices F, G, and H to the subpart) must be mailed or hand delivered to confirm the Telex. Designated representatives may include more than one vessel report in a Telex message, if the information is submitted on a vessel-by-vessel basis. Requests for corrections to previous reports must be submitted through the nation's designated representative and mailed or hand-delivered, together with a written explanation of the reasons for the errors. The appropriate Regional or Center Director may accept or reject any correction and initiate any appropriate civil penalty actions.

(2) *Weekly catch report (CATREP).* (i) The operator of each FFV must submit a weekly catch report stating any catch (activity code 1) in round weight of each species or species group allocated to that nation by area and days fished in each area for the weekly period Sunday through Saturday, GMT, as modified by the fishery in which the FFV is engaged (see Subpart C through G of this part). Foreign vessels delivering unsorted, unprocessed fish to a processing vessel are not required to submit CATREP's, if that processing vessel (activity code 2) submits consolidated CATREP's for all fish received during each weekly period. No report is required for FFV's which do not catch or receive foreign-caught fish during the reporting period.

(ii) Appendix F to this subpart contains the instructions and form to submit a CATREP.

(3) *Weekly receipts report (RECREP).* (i) The operator of each FFV must submit a weekly report stating any receipts of U.S.-harvested fish in a joint venture (activity code 4) for the weekly period Sunday through Saturday, GMT, as modified by the fishery in which the FFV is engaged (see Subparts C through G of this part), for each fishing area by authorized or prohibited species or species group; days fish received; round weight retained or returned to the U.S. fishing vessel; number of codends received; and number of vessels transferring codends. The report must also include the names of U.S. fishing vessels transferring codends during the week. No report is required for FFV's which do not receive any U.S.-harvested fish during the reporting period.

(ii) Appendix G to this subpart contains the instructions and form to submit a RECREP.

(4) *Marine mammal report (MAMREP).* (i) The operator of each FFV must submit a weekly report stating any incidental catch or receipt of marine mammals (activity codes 1 or 2 and/or 4), the geographical position caught, the condition of the animal, number caught (if more than one of the same species and condition), and nationality of the catching vessel for the period Sunday through Saturday, GMT, as modified by the fishery in which the vessel is engaged (see Subparts C through G of this part). Foreign catching vessels delivering unsorted, unprocessed fish to processing vessel are not required to submit MAMREP's provided that the processing or factory vessel (activity code 2) submits consolidated MAMREP's for all fish received during each weekly period. FFV's receiving U.S.-harvested fish in a joint venture (activity code 4) must submit consolidated reports for U.S. vessels operating in the joint venture. No report is requirled for FFV's

which do not catch or receive marine mammals during the reporting period.

(ii) Appendix H to this subpart contains the instructions and form to submit a MAMREP.

(g) *Submission instructions for weekly reports.* The designated representative for each FFV must submit weekly reports in the prescribed format to the appropriate Regional or Center Director of NMFS by 1900 GMT on the Wednesday following the end of the reporting period. For fisheries off Alaska, weekly reports, other than weekly receipts reports (RECREP's), must be received by 1900 GMT on the Friday following the end of the reporting period. For fisheries off Alaska, weekly receipts reports (RECREP's) must be received by 1900 GMT on the Wednesday following the end of the reporting period. However, by agreement with the appropriate Director, the designated representative may submit weekly reports to some other facility of NMFS (see Table 2 to Appendix A to this subpart).

[50 FR 34979, Aug. 28, 1985; 50 FR 43571, Oct. 28, 1985]

§ 611.5 Vessel and gear identification.

(a) *Vessel identification.* (1) The operator of each FFV assigned an international radio call sign (IRCS) must display that call sign amidships on both the port and starboard sides of the deckhouse or hull, so that it is visible from an enforcement vessel, and on an appropriate weather deck so it is visible from the air.

(2) The operator of each FFV not assigned an IRCS, such as a small trawler associated with a mothership or one of a pair of trawlers, must display the IRCS of the associated vessel, followed by a numerical suffix. (For example, JCZM-1, JCZM-2, etc. would be displayed on small trawlers not assigned an IRCS operating with a mother ship whose IRCS is JCZM; JANP-1 would be displayed by a pair trawler not assigned an IRCS operating with a trawler whose IRCS is JANP.)

(3) The vessel identification must be in a color in contrast to the background and must be permanently affixed to the FFV in block roman alphabet letters and arabic numerals at least one meter in height for FFV's over 20 meters in length, and at least one-half meter in height for all other FFV's.

(b) *Navigational lights and shapes.* Each FFV must display the lights and shapes prescribed by the International Regulations for Preventing Collisions at Sea, 1972 (TIAS 8587, and 1981 amendment TIAS 10672), for the activity in which the FFV is engaged (as described at 33 CFR Part 81).

(c) *Gear identification.* (1) The operator of each FFV must ensure that all deployed fishing gear which is not physically and continuously attached to an FFV: (i) is clearly marked at the surface with a buoy displaying the vessel identification of the FFV (see paragraph (a) of this section) to which the gear belongs, (ii) has attached a light visible for two miles at night in good visibility, and (iii) has a radio buoy.

Trawl codends passed from one vessel to another are considered continuously attached gear and are not required to be marked.

(2) The operator of each FFV must ensure that deployed longlines, strings of traps or pots, and gillnets are marked at the surface at each terminal end with: (i) a buoy displaying the vessel identification of the FFV to which the gear belongs (see paragraph (a) of this section, (ii) a light visible for two miles at night in good visibility, and (iii) a radio buoy.

Additional requirements may be specified in Subparts C through G for the fishery in which the vessel is engaged.

(3) Unmarked or incorrectly identified fishing gear may be considered abandoned and may be disposed of in accordance with applicable Federal regulations by any authorized officer.

(d) *Maintenance.* The operator of each FFV must—

(1) Keep the vessel and gear identification clearly legible and in good repair;

(2) Ensure that nothing on the FFV obstructs the view of the markings from an enforcement vessel or aircraft; and

(3) Ensure that the proper navigational lights and shapes are displayed for the FFV's activity and are properly functioning.

§ 611.6 Facilitation of enforcement.

(a) *General.* (1) The owner, operator, or any person aboard any FFV subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the FFV; to move the FFV to a specified location; and to facilitate safe boarding and inspection of the vessel, its gear, equipment, records, and fish and fish products on board for purposes of enforcing the Magnuson Act and this part.

(2) The operator of each FFV must provide vessel position or other information when requested by NMFS or the Coast Guard within the time specified in the request.

(b) *Communications equipment.* (1) Each FFV must be equipped with a VHF-FM radiotelephone station located so that it may be operated from the wheelhouse. Each operator must maintain a continous listening watch on channel 16 (156.8 mHz).

(2) Each FFV must be equipped with a radiotelegraph station capable of communicating via 500 kHz radiotelegraph and at least one working frequency between 405 kHz and 535 kHz, and a radiotelephone station capable of communicating via 2182 kHz radiotelephony and at least one set of working frequencies identified in Table 3 to Appendix A of this subpart appropriate to the fishery in which the FFV is operating. Each operator must monitor and be ready to communicate via 500 kHz radiotelegraph and 2182 kHz radiotelephone each day from 0800 GMT to 0830 GMT and 2000 to 2030 GMT, and in preparation for boarding.

(3) FFV's that are not equipped with processing facilities and that deliver all catches to a foreign processing vessel are exempt from the requirements of paragraph (b)(2) of this section.

(4) FFV's with no IRCS which do not catch fish and are used as auxiliary vessels to handle codends, nets, equipment, or passengers for a processing vessel are exempt from the requirements of paragraph (b)(1) and (b)(2) of this section.

(5) The appropriate Regional Director, with the agreement of the appropriate Coast Guard commander, may, upon request by a foreign nation, accept alternatives to the radio requirements of this section to certain FFV's or types or FFV operating in a fishery, provided they are adequate for the communications needs of the fishery.

(c) *Communications procedures.* (1) Upon being approached by a Coast Guard vessel or aircraft or other vessel or aircraft with an authorized officer aboard, the operator of any FFV subject to this part must be alert for communications conveying enforcement instructions. The enforcement unit may communicate by channel 16 VHF-FM radiotelephone, 2182 kHz radiotelephone, 500 kHZ radiotelegraph, message block from an aircraft, flashing light or flag signals from the International Code of Signals, hand signal, placard, loudhailer, or other appropriate means. The following signals extracted from the International Code of Signals are among those which may be used.

(i) "AA, AA, AA, etc." which is the call for an unknown station. The signaled vessel should respond by identifying itself or by illuminating the vessel identification required by § 611.5 of this part;

(ii) "RY-CY" meaning "You should proceed at slow speed, a boat is coming to you";

(iii) "SQ3" meaning "You should stop or heave to; I am going to board you"; and

(iv) "L" meaning "You should stop your vessel instantly."

(2) Failure of an FFV's operator to stop the vessel when directed to do so by an authorized officer using VHF-FM radiotelphone (channel 16), 2182 kHz radiotelephone (where required), 500 kHz radiotelegraph (where required), message block from an aircraft, flashing light signal, flaghoist, or loudhailer constitutes a violation of this part.

(3) The operator of or any person aboard an FFV who does not understand a signal from an enforcement unit and who is unable to obtain clarification by radiotelephone or other means must consider the signal to be a command to stop the FFV instantly.

(d) *Boarding.* The operator of an FFV signaled for boarding must—

(1) Monitor 2182 kHz radiotelephone and 500 kHz radiotelegraph (if equipped) and channel 16 (156.8 mHz) VHF-FM radiotelephone;

(2) Stop immediately and lay to or maneuver in such a way as to maintain the safety of the FFV and facilitate boarding by the authorized officer and the boarding party or an observer;

(3) Provide the authorized officer, boarding party, or observer a safe pilot ladder. The operator must ensure the pilot ladder is securely attached to the FFV and meets the construction requirements of Regulation 17, Chapter V of the International Convention for the Safety of Life at Sea (SOLAS), 1974 (TIAS 9700 and 1978 Protocol, TIAS 10009), or a substantially equivalent national standard approved by letter from the Assistant Administrator, with agreement with the Coast Guard. Safe pilot ladder standards are summarized below:

(i) The ladder must be of a single length of not more than 9 meters (30 feet), capable of reaching the water from the point of access to the FFV, accounting for all conditions of loading and trim of the FFV and for an adverse list of 15 degrees. Whenever the distance from sea level to the point of access to the ship is more than 9 meters (30 feet), access must be by means of an accommodation ladder or other safe and convenient means.

(ii) The steps of the pilot ladder must be—

(A) Of hardwood, or other material of equivalent properties, made in one piece free of knots, having an efficient non-slip surface; the four lowest steps may be made of rubber of sufficient strength and stiffness or of other suitable material of equivalent characteristics;

(B) Not less than 480 millimeters (19 inches) long, 115 millimeters (4½ inches) wide, and 25 millimeters (1 inch) in depth, excluding any non-slip device; and

(C) Equally spaced not less than 300 millimeters (12 inches) nor more than 380 millimeters (15 inches) apart and secured in such a manner that they will remain horizontal.

(iii) No pilot ladder may have more than two replacement steps which are secured in position by a method different from that used in the original construction of the ladder.

(iv) The side ropes of the ladder must consist of two uncovered manila ropes not less than 60 millimeters (2¼ inches) in circumference on each side (or synthetic ropes of equivalent size and equivalent or greater strength). Each rope must be continuous with no joints below top step.

(v) Battens made of hardwood, or other material of equivalent properties, in one piece and not less than 1.80 meters (5 feet 10 inches) long must be provided at such intervals as will prevent the pilot ladder from twisting. The lowest batten must be on the fifth step from the bottom of the ladder and the interval between any batten and the next must not exceed 9 steps.

(vi) Where passage onto or off the ship is by means of a bulwark ladder, two handhold stanchions must be fitted at the point of boarding or leaving the FFV not less than 0.70 meter (2 feet 3 inches) nor more than 0.80 meter (2 feet 7 inches) apart, not less than 40 millimeters (2½ inches) in diameter, and must extend not less than 1.20 meters (3 feet 11 inches) above the top of the bulwark.

(4) When necessary to facilitate the boarding or when requested by an authorized officer or observer, provide a manrope, safety line and illumination for the ladder; and

(5) Take such other actions as necessary to ensure the safety of the authorized officer and the boarding party and to facilitate the boarding and inspection.

(e) *Access and records.* (1) The owner and operator of each FFV must provide authorized officers access to all spaces where work is conducted or business papers and records are prepared or stored, including but not limited to, personal quarters and areas within personal quarters.

(2) The owner and operator of each FFV must provide to authorized officers all records and documents pertaining to the fishing activities of the vessel, including but not limited to, production records, fishing logs, navigation logs, transfer records, product receipts, cargo stowage plans or records, draft or displacement calculations, customs documents or records,

and an accurate hold plan reflecting the current structure of the vessel's storage and factory spaces.

(f) *Product storage.* The operator of each permitted FFV storing fish or fish products in a storage space must ensure that all non-fish product items are neither stowed beneath nor covered by fish products, unless required to maintain the stability and safety of the vessel. These items include, but are not limited to, portable conveyors, exhaust fans, ladders, nets, fuel bladders, extra bin boards, or other movable non-product items. These items may be in the space when necessary for safety of the vessel or crew or for storage of the product. Lumber, bin boards, or other dunnage may be used for shoring or bracing of product to ensure safety of crew and to prevent shifting of cargo within the space.

§ 611.7 Prohibitions.

(a) It is unlawful for any person to do the following:

(1) Ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of any fish taken or retained in violation of the Magnuson Act, the applicable GIFA, this part, or any permit issued under this part;

(2) Refuse to allow an authorized officer to board an FFV for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, the applicable GIFA, this part, or any other permit issued under this part;

(3) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any inspection or search described in paragraph (a)(2) of this section;

(4) Resist a lawful arrest for any act prohibited by the Magnuson Act, the applicable GIFA, this part, or any permit issued under this part;

(5) Interfere with, delay, or prevent by any means the apprehension or arrest of another person with the knowledge that such other person has committed any act prohibited by the Magnuson Act, the applicable GIFA, this part, or any permit issued under this part;

(6) Interfere with, obstruct, delay, oppose, impede, intimidate, or prevent by any means any boarding, investigation or search, wherever conducted, in the process of enforcing the Magnuson Act, the applicable GIFA, this part, or any permit issued under this part;

(7) Engage in any fishing activity for which the FFV does not have a permit as required under § 611.3;

(8) Engage in any fishing activity within the EEZ without a U.S. observer aboard the FFV, unless the requirement has been waived by the appropriate Regional Director;

(9) Retain or attempt to retain, within the EEZ, directly or indirectly, any U.S.-harvested fish, unless the FFV has a permit for activity code 4 which authorizes the receipt of that species of U.S.-harvested fish;

(10) Use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued under this part;

(11) Violate any provision of the applicable GIFA;

(12) Falsely or incorrectly complete (including by omission) a permit application or permit form as specified in § 611.3 (d) and (k);

(13) Fail to report to the Assistant Administrator within 15 days any change in the information contained in the permit application for a FFV, as specified in § 611.3(k);

(14) Forcibly assault, resist, oppose, impede, intimidate, or interfere with an observer placed aboard an FFV under this part;

(15) Interfere with or bias the sampling procedure employed by an observer, including sorting or discarding any catch prior to sampling, unless the observer has stated that sampling will not occur; or tampering with, destroying, or discarding an observer's collected samples, equipment, records, photographic film, papers, or effects without the express consent of the observer;

(16) Prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer from collecting samples, conducting product recovery rate determinations, making observations, or otherwise performing the observer's duties;

(17) Harass an authorized officer or observer (including sexual harass-

ment) by conduct which has the purpose or effect of unreasonably interfering with the observer's work performance, or which creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis;

(18) Fail to provide the required assistance to an observer as described at §§ 611.8 (c) and (d);

(19) Fail to identify, falsely identify, fail to properly maintain, or obscure the identification of the FFV or its gear as required by this part;

(20) Falsify or fail to make, keep, maintain, or submit any record or report required by this part;

(21) Fail to return to the sea or fail to otherwise treat prohibited species as required by this part;

(22) Fail to report or falsely report any gear conflict;

(23) Fail to report or falsely report any loss, jettisoning, or abandonment of fishing gear or other article into the EEZ which might interfere with fishing, obstruct fishing gear or vessels, or cause damage to any fishery resource or marine mammals;

(24) Continue activity codes 1 through 4 after those activity codes have been canceled under § 611.13;

(25) Violate any provisions of Subparts C through G of this part;

(26) Violate any provision of this part, the Magnuson Act, the applicable GIFA, any notice issued under this part or any permit issued under this part; or

(27) Attempt to do any of the foregoing.

(b) It is unlawful for any FFV, and for the owner or operator of any FFV except an FFV engaged only in recreational fishing, to fish—

(1) Within the boundaries of any State, unless the fishing is authorized by the Governor of that State as permitted by section 306(c) of the Magnuson Act to engage in a joint venture for processing and support with U.S. fishing vessels in the internal waters of that State; or

(2) Within the EEZ, or for any anadromous species or continental shelf fishery resources beyond the EEZ unless the fishing is authorized by, and conducted in accordance with, a valid permit issued under § 611.3 or by the Secretary of State under the International Convention for the High Seas Fisheries of the North Pacific Ocean.

§ 611.8 Observers.

(a) *General.* To carry out such scientific, compliance monitoring, and other functions as may be necessary or appropriate to carry out the purposes of the Magnuson Act, the appropriate Regional or Center Director (See Table 2 to Appendix A to this subpart) may assign U.S. observers to FFV's. Except as provided for in section 201(i)(2) of the Magnuson Act, no FFV may conduct fishing operations within the EEZ unless a U.S. observer is aboard.

(b) *Effort plan.* To ensure the availability of an observer as required by this section, the owners and operators of FFV's wishing to fish within the EEZ will submit to the appropriate Regional Director or Center Director; and also to the Chief, Office of Enforcement, National Marine Fisheries Service, Washington, D.C. 20235, ATTN: F/M5 (see Table 4 to Appendix A to this subpart), a schedule of fishing effort 30 days prior to the beginning of each quarter. A quarter is a time period of three consecutive months beginning January 1, April 1, July 1, and October 1 of each year. The schedule will contain the name and IRCS of each FFV intending to fish within the EEZ during the upcoming quarter, and each FFV's expected date of arrival and expected date of departure.

(1) The appropriate Regional or Center Director must be notified immediately of any substitution of vessels or any cancellation of plans to fish in the EEZ for FFV's listed in the effort plan required by this section.

(2) If an arrival date of an FFV will vary more than five days from the date listed in the quarterly schedule, the appropriate Regional or Center Director must be notified at least 10

days in advance of the rescheduled date of arrival. If the notice required by this paragraph is not given, the FFV may not engage in fishing until an observer is available and has been placed aboard the vessel or the requirement has been waived by the appropriate Regional or Center Director.

(c) *Assistance to observers.* To assist the observer in the accomplishment of his or her assigned duties, the owner and operator of an FFV to which an observer is assigned must—

(1) Provide, at no cost to the observer or the United States, accommodations for the observer aboard the FFV which are equivalent to those provided to the officers of that vessel;

(2) Cause the FFV to proceed to such places and at such times as may be designated by the appropriate Regional or Center Director for the purpose of embarking and debarking the observer;

(3) Allow the observer to use the FFV's communications equipment and personnel upon demand for the transmission and receipt of messages;

(4) Allow the observer access to and use of the FFV's navigation equipment and personnel upon demand to determine the vessel's position;

(5) Allow the observer free and unobstructed access to the FFV's bridge, trawl, or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds and any other space which may be used to hold, process weigh, or store fish or fish products at any time;

(6) Allow the observer to inspect and copy the FFV's daily log, communications log, transfer log, and any other log, document, notice, or record required by these regulations;

(7) Provide the observer copies of any records required by these regulations upon demand;

(8) Notify the observer at least 15 minutes before fish are brought aboard or fish or fish products are transferred from the FFV to allow sampling the catch or observing the transfer, unless the observer specifically requests not to be notified; and

(9) Provide all other reasonable assistance to enable the observer to carry out his or her duties.

(d) *Observer transfers.* (1) The operator of the FFV must ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours as weather and sea conditions allow, and with the agreement of the observer involved. The FFV operator must provide the observer three hours advance notice of at-sea transfers, so that the observer may collect personal belongings, equipment, and scientific samples.

(2) The FFV's involved must provide a safe pilot ladder and conduct the transfer according to the procedures of § 611.6(d) to ensure the safety of the observer during the transfer.

(3) An experienced crew member must assist the observer in the small boat or raft in which the transfer is made.

(e) *Supplementary observers.* In the event funds are not available from Congressional appropriations of fees collected to assign an observer to a foreign fishing vessel, the appropriate Regional or Center Director will assign a supplementary observer to that vessel. The costs of supplementary observers will be paid for by the owners and operators of foreign fishing vessels as provided for in paragraph (h) of this section.

(f) *Supplementary observer authority and duties.* (1) A supplementary observer aboard a foreign fishing vessel has the same authority and must be treated in all respects as an observer who is employed by NMFS either directly or under contract.

(2) The duties of supplementary observers and their deployment and work schedules will be specified by the appropriate Regional or Center Director.

(3) All data collected by supplementary observers will be under the exclusive control of the Assistant Administrator.

(g) *Supplementary observer payment*—(1) *Method of payment.* The owners and operators of foreign fishing vessels must pay directly to the contractor the costs of supplementary observer coverage. Payment must be made to the contractor supplying supplementary observer coverage either by letter of credit or certified check drawn on a Federally chartered bank in U.S. dollars, or other financial institution acceptable to the contractor. The letter of credit used to pay supplementary observer fees to contractors must be separate and distinct from the letter of credit required by § 611.22(b)(2)(ii) of these regulations. Billing schedules will be specified by the terms of the contract between NOAA and the contractors beginning in FY 1986. During FY 1985, the billing schedule will be determined by the Assistant Administrator to ensure sufficient funding for the program. Billings for supplementary observer coverage will be approved by the appropriate Regional or Center Director and then transmitted to the owners and operators of foreign fishing vessels by the appropriate designated representative. Each country will have only one designated representative to receive observer bills for all vessels of that country except as provided for by the Assistant Administrator. All bills must be paid within ten working days of the billing date. Failure to pay an observer bill will constitute grounds to revoke fishing permits. All fees collected under this section will be considered interim in nature and subject to reconciliation at the end of the fiscal year in accordance with paragraph (g)(4) of this section and § 611.22(b)(3) of these regulations.

(2) *Contractor costs.* The costs charged for supplementary observer coverage to the owners and operators of foreign fishing vessels may not exceed the costs charged to NMFS for the same or similar services, except that contractors may charge to the owners and operators of foreign fishing vessels and additional fee to cover the administrative costs of the program not ordinarily part of contract costs charged to NMFS. The costs charged foreign fishermen for supplementary observers may include, but are not limited to the following:

(i) Salary and benefits, including overtime, for supplementary observers;

(ii) The costs of post-certification training required by paragraph (i)(2) of this section;

(iii) The costs of travel, transportation, and per diem associated with deploying supplementary observers to foreign fishing vessels including the cost of travel, transportation, and per diem from the supplementary observer's post of duty to the point of embarkation to the foreign fishing vessel, and then from the point of disembarkation to the post of duty from where the trip began. For the purposes of these regulations, the appropriate Regional or Center Director will designate posts of duty for supplementary observers;

(iv) The costs of travel, transportation, and per diem associated with the debriefing following deployment of a supplementary observer by NMFS officials; and

(v) The administrative and overhead costs incurred by the contractor and, if appropriate, a reasonable profit.

(3) *NMFS costs.* The owners and operators of foreign fishing vessels must also pay to NMFS as part of the surcharge required by section 201(i)(4) of the Magnuson, the following costs:

(i) The costs of certifying applicants for the position of supplementary observer;

(ii) The costs of any equipment, including safety equipment, sampling equipment, operations manuals, or other texts necessary to perform the duties of a supplementary observer. The equipment will be specified by the appropriate Regional or Center Director according to the requirements of the fishery to which the supplementary observer will be deployed;

(iii) The costs associated with communications with supplementary observers for transmission of data and routine messages;

(iv) For the purposes of monitoring the supplementary observer program, the costs for the management and analysis of data;

(v) The costs for data editing and entry;

(vi) Any costs incurred by NMFS to train, deploy or debrief a supplementary observer; and

(vii) The cost for U.S. Customs inspection for supplementary observers disembarking after deployment.

(4) *Reconciliation.* Fees collected by the contractor in excess of the actual costs of supplementary observer coverage will be refunded to the owners and operators of foreign fishing vessels, or

kept on deposit to defray the costs of future supplementary observer coverage. Refunds will be made within 60 days after final costs are determined and approved by NMFS.

(h) *Supplementary observer contractors*—(1) *Contractor eligibility.* Supplementary observers will be obtained by NMFS from persons or firms having established contracts to provide NMFS with observers. In the event no such contract is in place, NMFS will use established, competitive contracting procedures to select persons or firms to provide supplementary observers. The services supplied by the supplementary observer contractors will be as described within the contract and as specified below.

(2) Supplementary observer contractors must submit for the approval of the Assistant Administrator the following:

(i) A copy of any contract, including all attachments, amendments, and enclosures thereto, between the contractor and the owners and operators of foreign fishing vessels for whom the contractor will provide supplementary observer services;

(ii) All application information for persons whom the contractor desires to employ as certified supplementary observers;

(iii) Billing schedules and billings to the owners and operators of foreign fishing vessels for further transmission to the designated representative of the appropriate foreign nation; and

(iv) All data on costs.

(i) *Supplementary observers—certification, training*—(1) *Certification.* The appropriate Regional or Center Director will certify persons as qualified for the position of supplementary observer once the following conditions are met:

(i) The candidate is a citizen or national of the United States.

(ii) The candidate has education or experience equivalent to the education or experience required of persons used as observers by NMFS as either Federal personnel or contract employees. The education and experience required for certification may vary according to the requirements of managing the foreign fishery in which the supplementary observer is to be deployed. Documentation of U.S. citizenship or nationality, and education or experience will be provided from personal qualification statements on file with NMFS contractors who provide supplementary observer services, and will not require the submission of additional information to NMFS.

(2) *Training.* Prior to deployment to foreign fishing vessels, certified supplementary observers must also meet the following conditions:

(i) Each certified supplementary observer must satisfactorily complete a course of training approved by the appropriate Regional or Center Director as equivalent to that received by persons used as observers by the NMFS as either Federal personnel or contract employees. The course of training may vary according to the foreign fishery in which the supplementary observer is to be deployed.

(ii) Each certified supplementary observer must agree in writing to abide by standards of conduct as set forth in Department of Commerce Administrative Order 202-735 (as provided by the contractor).

(j) *Supplementary observer certification suspension or revocation.* (1) Certification of a supplementary observer may be suspended or revoked by the Assistant Administrator under the following conditions:

(i) A supplementary observer fails to perform the duties specified as provided for by paragraph (g)(2) of this section.

(ii) A supplementary observer fails to abide by the standards of conduct described by Department of Commerce Administrative Order 202-735.

(2) The suspension or revocation of the certification of a supplementary observer by the Assistant Administrator may be based on the following:

(i) Boarding inspection reports by authorized officers of the U.S. Coast Guard or NMFS, or other credible information, that indicate a supplementary observer has failed to abide by the established standards of conduct; or

(ii) An analysis by the NMFS of the data collected by a supplementary observer indicating improper or incorrect data collection or recording. The failure to properly collect or record data is sufficient to justify decertification of supplementary observers; no intent to defraud need be demonstrated.

(3) The Assistant Administrator will notify the supplementary observer in writing of the Assistant Administrator's intent to suspend or revoke certification, and the reasons therefor, and provide the supplementary observer a reasonable opportunity to respond. If the Assistant Administrator determines that there are disputed questions of material fact, then the Assistant Administrator may in this respect appoint an examiner to make an informal fact-finding inquiry and prepare a report and recommendations.

§ 611.9 Recordkeeping.

(a) *General.* The owner and operator of each FFV must maintain timely and accurate records required by this section as modified by the regulations for the fishery in which the FFV is engaged (see Subparts C through G of this part).

(1) The owner and operator of each FFV must maintain all required records in English, based on Greenwich mean time (GMT) unless otherwise specified in the regulation, and make them immediately available for inspection upon the request of an authorized officer or observer.

(2) The owner and operator of each FFV must retain all required records on board the FFV whenever it is in the EEZ for three years after the end of the permit period.

(3) The owner and operator of each FFV must retain the required records and make them available for inspection upon the request of an authorized officer at any time during the three years after the end of the permit period, whether or not such records are on board the vessel.

(4) The owner and operator of each FFV must provide to the Assistant Administrator, in the form and at the times prescribed, any other information requested that the Assistant Administrator determines is necessary to fulfill the fishery conservation, management and enforcement purposes of the Magnuson Act.

(b) *Communications log.* The owner and operator of each FFV must record, in a separate communications log at the time of transmittal, the time and content of each notification made under § 611.4.

(c) *Transfer log.* Except for the transfer of unsorted, unprocessed fish via codend from a catching vessel to a processing vessel (activity code 2 or 4), the owner and operator of each FFV must record, in a separate transfer log, each transfer or receipt of any fish or fishery product, including quantities transferred or offloaded outside the EEZ. The operator must record in the log within twelve hours of the completion of the transfer:

(1) The time and date (GMT) and location (in geographic coordinates) the transfer began and was completed;

(2) The product weight, by species and product (use species and product codes from Appendices D and E of this subpart), of all fish transferred to the nearest hundredth of a metric ton (0.01 mt); and

(3) The name, IRCS, and permit number of both the FFV offloading the fish and the FFV receiving the fish.

(d) *Daily fishing log.* (1) The owner or operator of each FFV authorized to catch fish (activity code 1) must maintain a daily fishing log of the effort, catch and production of the FFV, as modified by paragraph (d)(2) of this section and the regulations for the fishery in which the FFV is engaged (see Subparts C through G of this part). The operator must maintain on a daily and cumulative basis for the permit period a separate log for each fishery (see Table 2 to Appendix A to this subpart) in which the FFV is engaged according to this section and in the format specified in Appendix I to this subpart or other format authorized under paragraph (k) of this section. Daily effort entries are required for each day the vessel conducts fishing operations within the EEZ. Daily entries are not required whenever the FFV is in port or engaged in a joint venture in the internal waters of a State. Each page of log may contain entries pertaining to only one day's fishing operations or one gear set, whichever is longer.

(2) The owner or operator of each FFV authorized to catch fish (activity code 1) and which delivers all catches

to a processing vessel, must maintain only SECTION ONE-EFFORT, of the daily fishing log, provided the processing vessel maintains a daily consolidated fishing log as described in paragraphs (f) and (g) of this section.

(e) *Daily fishing log—contents.* The daily fishing log must contain the following information, as modified by paragraph (d)(2) of this section and the fishery in which the FFV is engaged (see Subparts C through G of this part), and be completed according to the format and instructions of Appendix I to this subpart or other format authorized under paragraph (k) of this section.

(1) SECTION ONE-EFFORT must contain on a daily basis—

(i) A consecutive page number beginning with the first day the vessel started fishing operations within the FCZ and continuing throughout the log;—

111(ii) The date (based on (GMT);

(iii) The FFV's name;

(iv) The FFV's IRCS;

(v) The FFV's U.S. permit number;

(vi) The FFV's noon (1200 (GMT) position in geographic coordinates; and

(vii) The master or operator's signature or title.

(2) SECTION ONE-EFFORT must contain for each trawl or set, as appropriate to the gear type employed—

(i) The consecutive trawl or set number, beginning with the first set of the calendar year;

(ii) The fishing area in which the trawl or set was completed;

(iii) The gear type;

(iv) The time the gear was set;

(v) The position of the set;

(vi) The course of the set;

(vii) The sea depth;

(viii) The depth of the set;

(ix) The duration of the set;

(x) The hauling time;

(xi) The position of the haul;

(xii) The number of pots or longline units (where applicable);

(xiii) The average number of hooks per longline unit (where applicable);

(xiv) The trawl speed (where applicable);

(xv) The mesh size of the trawl's codend (where applicable); and

(xvi) The estimated total weight of the catch for the trawl of set, to at least the nearest metric ton round weight.

(3) SECTION TWO-CATCH must contain for each trawl or set—

(i) The consecutive set or trawl number from SECTION ONE;

(ii) The catch of each allocated species or species group to at least the nearest tenth of a metric ton (0.1 mt) round weight;

(iii) The prohibited species catch to at least the nearest tenth of a metric ton (0.1 mt) round weight or by number, as required by the regulations for the fishery in which the FFV is engaged; and

(iv) The species code of each marine mammal caught and its condition when released.

(4) SECTION TWO-CATCH must contain on a daily basis—

(i) The species codes for all allocated or prohibited species or species groups caught;

(ii) For each allocated species—the amount to at least the nearest tenth of a metric ton (0.1 mt) and the daily disposition, either processed for human consumption, used for fishmeal, or discarded; the daily catch by fishing area; the daily catch for all fishing areas; and the cumulative total catch;

(iii) For the total catch of allocated species—the amount to at least the nearest tenth of a metric ton (0.1 mt) and the daily disposition, daily total catch by fishing area, daily total catch for all fishing areas, and cumulative total catch; and

(iv) The catch by fishing area, daily total, and cumulative total of each prohibited species.

(5) SECTION THREE-PRODUCTION must contain on a daily basis for each allocated species caught and product produced—

(i) The product by species code and product type;

(ii) The daily product recovery rate of each species and product;

(iii) The daily total product produced by species to at least the nearest hundredth of a metric ton (0.01 mt);

(iv) The cumulative total of each product to at least the nearest hundredth of a metric ton (0.01 mt);

(v) The cumulative amount of product transferred;

(vi) The balance of product remaining aboard the FFV;

(vii) The total daily amount, cumulative amount, transferred product and balance of frozen product aboard the FFV to the nearest hundreth of a metric ton (0.01 mt); and

(viii) Transferred amount and balance of fishmeal and fish oil aboard to at least the nearest hundredth of a metric ton (0.01 mt).

(f) *Daily consolidated fishing log.* The owner or operator of each FFV which receives unsorted, unprocessed fish from foreign catching vessels (activity code 2) for processing must maintain a daily consolidated fishing log of the effort, catch and production of its associated foreign catching vessels and the processing vessel, as modified by the regulations for the fishery in which the FFV is engaged (see Subparts C through G of this part). This log is separate and in addition to any log required by paragraphs (d) and (e) of this section. The owner or operator must maintain a separate log for each fishery in which the FFV is engaged (see Table 2 of Appendix A to this subpart) on a daily and cumulative basis for the permit period according to this section and in the format specified specified in Appendix J to this subpart or other format authorized by paragraph (k) of this section. Each page of the log may contain entries pertaining to only one day's fishing operations.

(g) *Daily consolidated fishing log—contents.* Daily consolidated fishing logs must contain the following information, as modified by the fishery in which the vessel is engaged (see Subparts C through G of this part), and be completed according to the format and instructions of Appendix J to this subpart of other format authorized under paragraph (k) of this section.

(1) SECTION ONE-EFFORT must contain on a daily basis that information required in paragraph (e)(1) of this section.

(2) SECTION TWO-CATCH must contain for each foreign catching vessel on a daily basis and by area—

(i) The name and IRCS of the foreign catching vessel;

(ii) The fishing area number from which the fish were caught (Where the foreign catching vessel caught fish in more than one area, a daily entry for each area must be made);

(iii) The receipts of each allocated species or species group to at least the nearest tenth of a metric ton (0.1 mt) round weight;

(iv) The receipts of each prohibited species and species group to at least the nearest tenth of a metric ton (0.1 mt) round weight, or by number, as required by the fishery in which the FFV is engaged; and

(v) The species code of each marine mammal received and its condition when released.

(3) SECTION TWO-CATCH must contain on a daily basis—

(i) The species codes for all allocated or prohibited species or species groups received;

(ii) For each allocated species—the amount to at least the nearest tenth of a metric ton (0.1 mt) and the daily disposition, either processed for human consumption, used for fishmeal, or discarded; the daily receipts by fishing area; the daily catch for all fishing areas; and the cumulative total catch;

(iii) For the total receipts of allocated species—the amount to at least the nearest tenth of a metric ton (0.1 mt) and the daily disposition, daily total receipts by fishing area, daily total receipts for all fishing areas, and cumulative total receipts; and

(iv) The receipts by fishing area, daily total and cumulative total of each prohibited species.

(4) SECTION THREE-PRODUCTION must contain on a daily basis for each allocated species received and product produced that information required in paragraph (e)(5) of this section.

(h) *Daily joint venture log.* The operator of each FFV which receives U.S.-harvested fish from U.S. fishing vessels in a joint venture (activity code 4) must maintain a daily joint venture log of the effort, catch and production of its associated U.S. fishing vessels and the processing vessel as modified by the regulations for the fishery in which the FFV is engaged (see Subparts C through G of this part). This log is separate and in addition to any log required by paragraphs (d) and (f) of this section. The operator must maintain a separate log for each fishery in which the FFV is engaged on a daily and cumulative basis according to this section and in the format specified in Appendix K to this subpart or other format authorized under paragraph (k) of this section. Receipts of fish caught outside the EEZ must be included. Each page of the log may contain entries pertaining to only one day's fishing operations.

(i) *Daily joint venture log—contents.* Daily joint venture logs must contain the following information, as modified by the fishery in which the vessel is engaged (see Subparts C through G of this part), and be completed according to the format and instructions of Appendix K of this subpart or other format authorized under paragraph (k) of this section.

(1) SECTION ONE-EFFORT must contain on a daily basis that information required in paragraph (e)(1) of this section.

(2) SECTION ONE-EFFORT must contain for each receipt of a codend—

(i) The consecutive codend number, beginning with the first codend received for the calendar year;

(ii) The name of the U.S. fishing vessel the codend was received from;

(iii) The fishing area where the codend was received;

(iv) The time the codend was received;

(v) The position the codend was received; and

(vi) The estimated weight of the codend to at least the nearest metric ton round weight.

(3) SECTION TWO-CATCH must contain for each codend received—

(i) The consecutive codend number from SECTION ONE;

(ii) The receipts of each authorized species or species group and its disposition, either processed for human consumption, used for fishmeal, discarded, or returned to the U.S. fishing vessel, to at least the nearest tenth of a metric ton (0.1 mt) round weight;

(iii) The estimated receipts of each prohibited species or species group and its disposition, either discarded or returned to the U.S. fishing vessel if authorized in the fishery in which the U.S. vessel is engaged, to at least the nearest tenth of a metric ton (0.1 mt) round weight; and

(iv) The species code of each marine mammal received and its condition when released.

(4) SECTION TWO-CATCH must contain on a daily basis—

(i) The species codes of all authorized or prohibited species or species groups received;

(ii) The daily disposition, as described in paragraph (i)(3)(ii) of this section, daily total, and cumulative total receipts of each authorized species or species groups;

(iii) The daily disposition, daily total and cumulative total receipts of all authorized species or species groups; and

(iv) The daily and cumulative total receipts of prohibited species groups and their disposition as described in paragraph (i)(3)(iii).

(5) SECTION THREE—PRODUCTION must contain on a daily basis for each authorized species or species group received and product produced that information required in paragraph (e)(5) of this section.

(j) *Daily log maintenance.* The logs required by paragraphs (e) through (i) of this section must be maintained separately for each fishery in Subparts C through G (see Table 2 to Appendix A to this subpart).

(1) The effort section (all of SECTION ONE) of the daily logs must be updated within two hours of the hauling or receipt time. The catch or receipt by trawl or set (SECTION TWO) must be entered within 12 hours of the hauling or receipt time. The daily and cumulative total catch or receipts (SECTION TWO) and the production portion (SECTION THREE) of the log must be updated within 12 hours of the end of the day on which the catch was taken. The date of catch is the day and time (GMT) the gear is hauled.

(2) Entries for total daily and cumulative catch or receipt weights (disposition "C"or "M") must be based on the most accurate method available to the vessel, either scale round weights or factory weights converted to round weights. Entries for daily and cumulative weights of discarded or returned fish (disposition "D" or "R") must be based on the most accurate method

available to the vessel, either actual count, scale round weight, or estimated deck weights. Entries for product weights must be based on the number of production units (pans, boxes, blocks, trays, cans, or bags) and the average weight of the production unit, with reasonable allowances for water added. Allowances for water added cannot exceed five percent of the unit weight. Product weights cannot be based on the commercial or arbitrary wholesale weight of the product, but must be based on the total actual weight of the product as determined by representative samples.

(3) The owner or operator must make all entries in indelible ink with corrections to be accomplished by lining out and rewriting rather than erasure.

(k) *Alternative log formats.* As an alternative to the use of the specific formats described in Appendices I, J, and K to this subpart, a nation may submit a proposed log format for FFV's of that nation for a general type of fishery operation in a fishery (i.e. joint venture operations) to the appropriate Regional Director and the Coast Guard commander (see Appendix A to this subpart). With the agreement of the Coast Guard commander, the Regional Director may authorize the use of that log format for vessels of the requesting nation.

[50 FR 34979, Aug. 28, 1985; 50 FR 43571, Oct. 28, 1985]

§ 611.10 Fishing operations.

(a) *Catching.* Each FFV authorized for activity code 1 may catch fish. An FFV may retain its catch of any species or species group for which there is an unfilled national allocation. All fish caught will be counted against the national allocation, even if the fish are discarded, unless exempted by the regulations of the fishery in which the FFV is engaged (see Subparts C through G of this part). Catching operations may be conducted as specified by the regulations of the fishery in which the FFV is engaged and as modified by the FFV's permit.

(b) *Scouting.* Each FFV authorized for activity code 1 or 2 may scout for fish. Scouting may only be conducted whenever and wherever catching operations for FFV's of that nation are permitted, whenever and wherever joint venture operations are authorized by an FFV's permit under activity code 4, and under such other circumstances as may be designated in these regulations or the permit.

(c) *Processing.* Each FFV with activity code 1 or 2 may process fish. Processing may only be conducted whenever and wherever catching operations for FFV's of that nation are permitted, whenever and wherever joint venture operations are authorized by an FFV's permit under activity code 4, and under such other circumstances as may be designated in these regulations or the permit.

(d) *Support.* Each FFV with activity code 1, 2, or 3 may support other permitted FFV's. Support operations may be conducted whenever and wherever catching or processing for the FFV's being supported are permitted, and under such other circumstances as may be designated in these regulations or the permit.

(e) *Joint ventures.* Each FFV with activity code 4 in addition to activity codes 1 or 2 may also conduct operations with U.S. fishing vessels. These joint venture operations with U.S. fishing vessels may be conducted throughout the EEZ, and under such other circumstances as may be designated in these regulations or the permit. FFV's with activity code 4 may continue operations assisting U.S. fishing vessels despite closures under § 611.13(a).

(f) Each FFV authorized by the Governor of a State under Section 306(c) of the Magnuson Act may engage in processing and support of U.S. fishing vessels within the internal waters of that State, in compliance with terms and conditions set by the authorizing Governor.

§ 611.11 Prohibited species.

(a) The owner or operator of each FFV must minimize its catch or receipt of prohibited species.

(b) After allowing for sampling by an observer (if any), the owner or operator of each FFV must sort its catch of fish received as soon as possible and return all prohibited species and species parts to the sea inmediately with a minimum of injury, regardless of condition, unless a different procedure is specified by the regulations for the fishery in which the FFV is engaged (see Subparts C through G of this part). All prohibited species must be recorded in the daily fishing log and other fishing logs as specified by the regulations for the fishery in which the FFV is engaged.

(c) All species of fish which an FFV has not been specifically allocated or authorized under this part to retain, including fish caught or received in excess of any allocation or authorization, are prohibited species.

(d) It is a rebuttable presumption that any prohibited species or species part found on board an FFV was caught and retained in violation of this secton.

§ 611.12 Gear avoidance and disposal.

(a) *Vessel and gear avoidance.* (1) FFV's arriving on fishing grounds where fishing vessels are already fishing or have set their gear for that purpose must ascertain the position and extent of gear already placed in the sea and must not place themselves or their fishing gear so as to interfere with or obstruct fishing operations already in progress. Vessels using mobile gear must avoid fixed fishing gear.

(2) The opeator of each FFV must maintain on its bridge a current plot of broadcast fixed-gear locations for the area in which it is fishing as required by the regulations for the fishery in which the FFV is engaged (see Subparts C through G of this part).

(b) *Gear conflicts.* The operator of each FFV which is involved in a conflict or which retrieves the gear of another vessel must immediately notify the appropriate Coast Guard commander identified in Appendix A to this subpart and request disposal instructions. Each report must include:

(1) The name of the reporting vessel;

(2) A description of the incident and articles retrieved including the amount, type of gear, condition, and identification markings;

(3) The location of the incident; and

(4) The date and time of the incident.

(c) *Disposal of fishing gear and other articles.* (1) The operator of an FFV in the EEZ may not dump overboard, jettison or otherwise discard any article or substance which may interfere with other fishing vessels or gear, or which may catch fish or cause damage to any marine resource, including marine mammals and birds, except in cases of emergency involving the safety of the ship or crew, or as specifically authorized by communication from the appropriate Goast Guard commander or other authorized officer. These articles and substances include but are not limited to fishing gear, net scraps, bale straps, plastic bags, oil drums, petroleum containers, oil, toxic chemicals or any manmade items retrieved in an FFV's gear.

(2) The operator of an FFV may not abandon fishing gear into the EEZ.

(3) If these articles or substances are encountered, or in the event of accidental or emergency placement into the EEZ, the vessel operator must immediately report the incident to the appraopriate Coast Guard Commander indicated in Appendix A to this subpart, and give the information required in paragraph (b) of this section.

§ 611.13 Fishery closure procedures.

(a) Activity codes 1 and 2 for a fishery are automatically canceled in the following cases unless otherwise specified by Subparts C through G to this part when—

(1) The optimum yield for any allocated species or species group has been reached in that fishery;

(2) The total allowable level of foreign fishing or catch allowance for any allocated species or species group has been reached in that fishery;

(3) The foreign nation's allocation for any allocated species or species group has been reached; or

(4) The letter of credit required in § 611.22(b)(2) is not established and maintained.

(b) Activity code 4 is automatically canceled when—

(1) The optimum yield for a species with a joint venture processing (JVP) amount is reached;

(2) The JVP amount for a species or species group is reached; or,

(3) The letter of credit required in § 611.22(b)(2) is not established and maintained.

(c) *Notification.* (1) The Regional Director is authorized to close a fishery on behalf of the Assistant Administrator. The Regional Director will notify each FFV's designated representative of closures.

(2) If possible, notice will be given 48 hours before the closure. However, each nation and the owners and operators of all FFV's of that nation are responsible for ending fishing operations when an allocation is reached.

(d) *Catch reconciliation.* Vessel activity reports, U.S. surveillance observations, observer reports, and foreign catch and effort reports will be used to make the determination listed in paragraphs (a) and (b) of this section. If NMFS estimates of catch or other values made during the season differ from those reported by the foreign fleets, efforts may be initiated by the designated representative of each nation to resolve such differences with NMFS. If, however, differences still persist after such efforts have been made, NMFS estimates will be the basis for decisions and will prevail.

(e) *Duration.* Any closure under this section will remain in effect until an applicable new or increased allocation or JVP becomes available or the letter of credit required by § 611.22(b)(2) is reestablished.

§ 611.14 Scientific research.

(a) The term "scientific research" contained in paragraph (r) of § 611.2 may include certain fishing activities such as the catching, taking, or harvesting of fish in commerical quantities, or the use of gear capable of catching, taking, or harvesting fish in commerial quantities, or fishing in areas, at times, for species, and with gear, any of which may not be otherwise authorized, if such activities are carried out in full cooperation with the United States.

(b) For the purpose of gathering additional management information, the Center Director may authorize limited "scientific research" as described in paragraph (a) of this section under terms and conditions to be specified by the Center Director.

§ 611.15 Recreational fishing.

(a) Foreign vessels conducting recreational fishing must comply only with this section, § 611.1, § 611.2, § 611.6(a)(1), and § 611.7 (as applicable). Such vessels may conduct recreational fishing within the EEZ and within the boundaries of a State. Any fish caught may not be sold, bartered, or traded.

(b) The owners or operator and any other person on board any foreign vessel conducting recreational fishing must comply with any federal laws or regulations applicable to the domestic fishery while in the EEZ and any State laws or regulations applicable while in State waters.

§ 611.16 Relation to other laws.

(a) Persons affected by these rules should be aware that other Federal and State statutes may apply to their activities.

(b) Fishing vessel operators must exercise due care in the conduct of fishing activities near submarine cables. Damage to submarine cables resulting from intentional acts or from the failure to exercise due care in the conduct of fishing operations subjects the fishing vessel operator to enforcement action under the International Convention for the Protection of Submarine Cables, and to the criminal penalties prescribed by the Submarine Cable Act (47 U.S.C. 21) and other laws which implement that Convention. Fishing vessel operators also should be aware that the Submarine Cable Act prohibits fishing operations at a distance of less than one nautical mile from a vessel engaged in laying or repairing a submarine cable; or at a distance of less than one quarter nautical mile from a buoy or buoys intended to mark the position of a cable when being laid, or when out of order or broken.

APPENDIX A TO SUBPART A—ADDRESSES, AREAS OF RESPONSIBILITY AND COMMUNICATIONS

TABLE 1—ADDRESSES

NMFS regional directors	NMFS center directors	U.S. Coast Guard commanders
Director, Northeast Region, National Marine Fisheries Service, NOAA, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930, Telex No.: 940007, Telephone: (617) 281-3600.	Director, Northeast Fisheries Center, National Marine Fisheries Service, NOAA, Woods Hole, Massachusetts 02543, Telephone: (617) 548-5123.	Commander, Atlantic Area, U.S. Coast Guard, Governor's Island, New York, N.Y. 10004, Telex No. 126831, Telephone: (212) 668-7877.
Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702, Telephone: (813) 893-3141.	Director, Southeast Fisheries Center, National Marine Fisheries Service, NOAA, 75 Virginia Beach Drive, Miami, Florida 33149, Telephone (305) 361-4284.	As above.
Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, Northeast, BIN C15700, Seattle, Washington 98115, Telex No.: 9104442786, Telephone: (206) 526-6150.	Director, Northwest and Alaska Fisheries Ctr, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, Northeast, BIN C15700, Bldg. 4, Seattle, Washington 98115, Telex No. 329422, Telephone: (206) 526-4000.	Commander, Pacific Area, U.S. Coast Guard, Government Island, Alameda, California 94501, Telex No. 172343, Telephone: (415) 437-3700.
Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99801, Telex No.: 09945-377, Telephone: (907) 586-7221.	Director, Northwest and Alaska Fisheries Ctr, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, Northeast, BIN C15700, Bldg. 4, Seattle, Washington 98115, Telex No. 329422, Telephone: (206) 526-4000.	Commander, Seventeenth Coast Guard District, P.O. Box 3-5000, Juneau, Alaska 99801, Telex No. 45305, Telephone: (907) 586-7200, After hours (907) 586-7340.
Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731, Telephone: (213) 548-2575.	Director, Southwest Fisheries Center, National Marine Fisheries Service, NOAA, P.O. Box 271, La Jolla, California 92038, Telephone: (619) 453-2820.	Commander, Fourteenth Coast Guard District, 300 Ala Moana Boulevard, Honolulu, Hawaii 96813, Telex No. 392401, Telephone: (808) 546-7597.

TABLE 2—AREAS OF RESPONSIBILITY OF NMFS AND U.S. COAST GUARD OFFICES

Area of responsibility	Fishery	National Marine Fisheries Service	U.S. Coast Guard
Atlantic Ocean north of Cape Hatteras.	Northwest Atlantic Ocean Fishery, including the Hake Fishery.	Director, Northeast Region Director, Northeast Center	Commander, Atlantic Area.
Atlantic Ocean south of Cape Hatteras.	Atlantic Billfish and Sharks Fishery.	Director, Southeast Region	Commander, Atlantic Area.
	Royal Red Shrimp Fishery		
Gulf of Mexico		Director, Southeast Center	
Caribbean Sea			
Pacific Ocean off the States of California, Oregon, and Washington.	Pacific Coast Groundfish Fishery.	Director, Northwest Region Director, Northwest and Alaska Center.	Commander, Pacific Area.
North Pacific Ocean and Bering Sea off Alaska.	Gulf of Alaska Groundfish Fishery.	Director, Alaska Region	Commander, Seventeenth Coast Guard District.
	Bering Sea and Aleutian Islands Groundfish Fishery.	Directory, Northwest and Alaska Centers.	
	Snail Fishery		
Pacific Ocean off Hawaii and other U.S. insular possessions in the Central and Western Pacific.	Seamount Groundfish Fishery	Director, Southwest Region	Commander, Fourteenth
	Pacific Billfish, Oceanic Sharks, Wahoo, and Mahimahi Fishery.	Director, Southwest Center	Coast Guard District.
	Precious Coral Fishery		

TABLE 3—U.S. COAST GUARD COMMUNICATIONS STATIONS AND FREQUENCIES

U.S. Coast Guard Communications Station	IRCS	Radiotelegraphy			Radiotelephone	
		kHz	mHz	Time[1]	Channel[2]	GMT time
Boston	NMF	500		All	B	All
Portsmouth	NMN	500	8, 12	All	A	0200-1200
			16	HJ	B, C	All
					D	1200-0200 (On request)
Miami	NMA	500		All	B	All
San Juan	NMR	500	8, 12	All	None	
			16	HJ		
New Orleans	NMG	500		All	A	0200-1200
					B, C	All
					D	1200-0200
					E	(On request)
San Francisco	NMC	500	8	All	A, B, C	All
			6	HN	D	0200-2400
			16	HJ	E	(On request)
Honolulu	NMO	500	8, 12	All	A, B, C	All
			22	HJ	D, E	(On request)
Guam	NRV	500		All	None	
			8, 12	HN		
Kodiak	NOJ	500		All	B	All
					A, C, D, and E	(On Request)

[1] HJ means 2 hours after sunrise until 2 hours before sunset, local time. HN means 2 hours before sunset until 2 hours after sunrise, local time.

[2] Carrier frequencies of duplex, high-frequency single-sideband channels are:

Letter	Shore transmit	Ship transmit
A	4428.7	4134.3
B	6506.4	6200.0
C	8765.4	8241.5
D	13113.2	12342.4
E	17307.3	16534.4

TABLE 4—ADDRESSES FOR REPORTS AND SUBMITTALS

Fishery	Permit applications § 611.3(d)	Activity reports § 611.4(c)	Weekly reports § 611.4(f)	Effort plan § 611.8(b)	Gear conflicts § 611.12(b)	Permit fees, poundage fees, surcharges, and observer fees § 611.22
Northwest Atlantic Ocean Fishery, including the Hake Fishery	DOS	CG Atlantic Area, NMFS-NER	NMFS-NER NMFS-NER	NMFS-NER, Attn: Observer Program, NMFS-F/M5	CG Atlantic Area	NMFS-F/M12
Atlantic Billfish and Sharks Fishery	DOS	CG Atlantic Area	NMFS-SER	NMFS-SER NMFS-F/M5	CG Atlantic Area	NMFS-F/M12
Royal Red Shrimp Fishery		NMFS-SER				
Pacific Coast Groundfish Fishery	DOS	CG Pacific Area, NMFS-NWR	NMFS-NWC	NMFS-NWC NMFS-F/M5	CG Pacific Area	NMFS-F/M12
Gulf of Alaska Groundfish Fishery	DOS	CG Dist. 17	NMFS-AKR	NMFS-NWC NMFS-F/M5	CG Dist. 17	NMFS-F/M12
Bering Sea and Aleutian Islands Groundfish Fishery		NMFS-AKR				

TABLE 4—ADDRESSES FOR REPORTS AND SUBMITTALS—Continued

Fishery	Permit applications § 611.3(d)	Activity reports § 611.4(c)	Weekly reports § 611.4(f)	Effort plan § 611.8(b)	Gear conflicts § 611.12(b)	Permit fees, poundage fees, surcharges, and observer fees § 611.22
Snail Fishery						
Seamount Groundfish Fishery	DOS	CG Dist. 14	NMFS-SWR	NMFS-SWR	CG Dist. 14	NMFS-F/M12
Pacific Billfish, Oceanic Sharks, Wahoo and Mahimahi Fishery		NMFS-SWR		NMFS-F/M5		
Precious Coral Fishery						

ABBREVIATIONS:
DOS—Department of State, OES/OFA, Washington, D.C. 20520.
NMFS:
—F/M5—Chief, Office of Enforcement, National Marine Fisheries Service, 3300 Whitehaven St., Washington, D.C. 20235, ATTN: F/M5.
—F/M12—Chief, Fees, Permits, and Regulations Division, National Marine Fisheries Service, 3300 Whitehaven St., NW., Washington, D.C. 20235, ATTN: F/M12.
—NER—Director, Northeast Region (see Table 1).
—SER—Director, Southeast Region (see Table 1).
—NWR—Director, Northwest Region (see Table 1).
—NWC—Director, Northwest and Alaska Fisheries Center (see Table 1).
—AKR—Director, Alaska Region (see Table 1).
—SWR—Director, Southwest Region (see Table 1).
CG Atlantic Area—Commander, Atlantic Area (see Table 1).
CG Pacific Area—Commander, Pacific Area (see Table 1).
CG Dist. 17—Commander, Seventeenth Coast Guard District (see Table 1).
CG Dist. 14—Commander, Fourteenth Coast Guard District (see Table 1).

APPENDIX B TO SUBPART A—VESSEL ACTIVITY REPORTS

1. *ACTIVITY Report Format*

A. "From" line: Name of the FFV and its IRCS.

B. "To" line: Include appropriate Coast Guard commander and NMFS region as addressees.

C. Date: Expressed numerically as month and day, based on GMT (two digits each), followed by letter "D" and a confirmation code (A 2 digit sum of the 4 digits in the date. A sum of less than 10 must be preceded by a 0).

D. Time: Expressed in GMT followed by the letter "Z" (or other time zone description required by the fishery) and a confirmation code (2 digit sum of 4 digit time).

E. Latitude: To the nearest minute (4 digits) followed by the letter "N" and confirmation code (2 digit sum of 4 digit latitude number).

F. Longitude: To the nearest minute (4 or 5 digits) followed by the letter "E" or "W" (as appropriate for longitude) and confirmation code (2 digit sum of digits in longitude).

G. Area Codes: See Appendix C.

H. Species Codes: See Appendix D.

I. Product: Fish or fisheries product expressed in metric tons (to at least the nearest tenth or hundredth of a metric ton, as appropriate).

J. Fishery Product Code: From Appendix E, followed by a confirmation code (2 digit sum of the digits in the Species Code (if appropriate to the product) and the digits in the Product).

K. The general format of messages appears as follows (CC means confirmation code):

From: (FFV name, IRCS)
To: (Coast Guard Commander, City, State)
(NMFS Region, City, State)

VESREP

(FFV name)/(IRCS)/(DATE)D(CC)/(TIME)Z(CC)/(LATITUDE)N(CC)/(LONGITUDE) (E or W) (CC)/(AREA CODE)/(ACTION CODE)//

L. The general format for a report concerning Product would appear as follows (CC means confirmation code).

(SPECIES CODE)/(PRODUCT) (PRODUCT CODE) (CC)//(SPECIES CODE)/(PRODUCT) (PRODUCT CODE) (CC)// etc.

2. *BEGIN report.* Begin reports must be delivered to the appropriate Coast Guard commander no later than 24 hours before fishing.

Example: The stern trawler NAVIS, LTUX, will begin fishing on March 11 at 1320 GMT, at position 59°30' N. latitude, 142°30' W. longitude, in the Yakutat fishing area (code 64) of the Gulf of Alaska. There are 105.5 metric tons of headed and gutted (use product code HG from Appendix E to this subpart) Alaska pollock (use species code 701 from Appendix D to this subpart), 53.0 metric tons headed and gutted (code HG) Pacific cod (code 702) and 35.0 metric tons of fish meal (code M) on board. The required message would be transmitted as follows:

From: F/V NAVIS, LTUX
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA
ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

NAVIS/LTUX/0311D05/1320Z06/5930N17/14230W10/BEGIN//
PRODUCT ABOARD/701/105.5HG19//702/53.0HG17//35.0M08//

If no product was aboard the PRODUCT ABOARD line could be omitted.

3. *DEPART report.* Depart reports must be transmitted before departure and delivered within 24 hours of transmittal.

Example: The stern trawler NAVIS, LTUX, will depart the EEZ at position 45°15′ N. latitude, 124°20′ W. longitude on July 11 at 1800 GMT in the Columbia fishing area (code 71) in the Northeast Pacific Ocean, to make a port call. The required message would be transmitted as follows:

From: F/V NAVIS, LTUX
To: COAST GUARD PACIFIC AREA, ALAMEDA, CALIFORNIA
NORTHWEST REGION, NMFS, SEATTLE, WASHINGTON

VESREP

NAVIS/LTUX/0711D09/1800Z09/4515N15/12420W09/71/DEPART//

4. *RETURN report.* Return reports must be transmitted before the returning to the grounds and delivered within 24 hours of transmittal.

Example: The stern trawler NAVIS, LTUX, will return from a port call to the EEZ on July 14 at 2230 GMT at position 44°45′ N. latitude, 124°33′ W. longitude in the Columbia area (code 71). The required message would be transmitted as follows:

From: F/V NAVIS, LTUX
To: COAST GUARD PACIFIC AREA, ALAMEDA, CALIFORNIA
NORTHWEST REGION, NMFS, SEATTLE, WASHINGTON

VESREP

NAVIS/LTUX/0714D12/2230Z07/4445N17 12433W13/71/RETURN//

5. *SHIFT report.* Shift reports must be transmitted before leaving the original fishing area and delivered within 24 hours of transmittal. If an FFV is fishing within 20 nautical miles either side of a boundary the message must be transmitted before the last shift in fishing areas expected for that day, include all the day's shifts, and be delivered within 24 hours of its transmittal.

A. Example of standard SHIFT report. The longline vessel CABLE, EXRC, fishing in the Atlantic billfish and sharks fishery is shifting areas to Atlantic area 16. The vessel will begin fishing in area 16 on December 3 at 1000 GMT at position 36°35′ N. latitude, 73°25′ W. longitude. The required message would be transmitted as follows:

From: F/V CABLE, EXRC
To: COAST GUARD ATLANTIC AREA, NEW YORK, NEW YORK
NORTHEAST REGION, NMFS, GLOUCESTER, MASSACHUSETTS

VESREP

CABLE/EXRC/1203D06/1000Z01/3635N17/7325W17/16/SHIFT//

B. Example of SHIFT report when the FFV fishes on a boundary. The stern trawler NAVIS, LTUX, is fishing in area 22 in the Northwest Atlantic Ocean fishery. The vessel will begin fishing in area 23 on October 15 at 1115 GMT at position 39°01′ N. latitude, 73°10′ W. longitude. At 1720 GMT the vessel again SHIFTS to area 22 at position 38°59′ N. latitude, 73°07′ W. longitude. The vessel will remain within 20 nautical miles of the boundary. The required report would be transmitted as follows before the last EXPECTED SHIFT of the day:

From: F/V NAVIS, LTUX
To: COAST GUARD ATLANTIC AREA, NEW YORK, NEW YORK
NORTHEAST REGION, NMFS, GLOUCESTER, MASSACHUSETTS

VESREP

NAVIS/LTUX/1015D07/1115Z08/3901N13/7310W11/23/SHIFT//
NAVIS/LTUX/1015D07/1720Z10/3859N25/7307W17/22/SHIFT//

6. *JV OPS reports.* Reports of starting or ending joint venture receipts and operations must be transmitted before the event and delivered within 24 hours of their transmittal. They are in addition to the requirements of other activity reports.

Example: The stern trawler NAVIS, LTUX, will begin joint venture receipts or processing on July 9, 1983, at 1320 GMT at position 43°40′ N. latitude, 124°30′ W. longitude in the Columbia area (code 71): The required message would be transmitted as follows:

From: F/V NAVIS, LTUX
To: COAST GUARD PACIFIC AREA, ALAMEDA, CALIFORNIA
NORTHWEST REGION, NMFS, SEATTLE, WASHINGTON

VESREP

NAVIS/LTUX/0709D16/1320Z06/4340N11/
12430W10/71/START JV OPS//

7. *TRANSFER reports.* Transfer reports must be transmitted prior to the transfer and delivered within 24 hours of transmittal.

Example: The refrigerated transport vessei SOPOV, LJUJ, will conduct a transfer with the stern trawler NAVIS, LTUX, on July 22 at 1900 GMT in position 58°30′ N. latitude, 175°10′ W. longitude in Bering Sea area 52 (code 52). The required message would be transmitted as follows:

From: M/V SOPOV, LJUJ
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA
ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

SOPOV/LJUJ/0722D11/1900Z10/5830N16/
17510W14/52//

TRANSFER/NAVIS/LTUX//

8. *OFFLOADED report.* Offloaded-to reports must be transmitted within 12 hours of the completion of the transfer and delivered before the FFV ceases fishing in the EEZ and within 24 hours of transmittal.

Example. The stern trawler NAVIS, LTUX, completed transfer operations with the refrigerated transport vessel SOPOV, LJUJ, at 0900 GMT on July 24 at position 58°30′ N. latitude, 175°10′ W. longitude, in Bering Sea Area 52 (code 52). NAVIS transferred 130.10 metric tons of headed and gutted (code HG) Alaska pollock (code 701), 15.75 metric tons of headed and gutted (code HG) Pacific cod (code 702), 5.63 metric tons of pollock roe (codes 701 and R respectively) and 5.10 metric tons of fish meal (code M). The required message would be transmitted as follows:

From: F/V NAVIS, LTUX
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA
ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

NAVIS/LTUX/0724D13/0900Z09/5830N16/
17510W14/52//
OFFLOADED TO/SOPOV/LJUJ//
701/130.10HG13//702/15.75HG27//701/
5.63R22//5.10M06//

9. *RECEIVED report.* Received-from reports must be transmitted within 12 hours of the completion of the transfer and delivered before the FFV ceases fishing in the EEZ and within 24 hours of transmittal. More than one operation may be reported in one report, provided the above time constraints are met for all operations.

Example: The refrigerated transport vessel SOPOV, LJUJ, completed transfer operations with the stern trawler, NAVIS, LTUX, at 0900 GMT on July 24 at position 58°30′ N. latitude, 175°10′ W. longitude, in Bering Sea Area 52 (code 52). NAVIS transferrred 130.00 metric tons of headed and gutted (code HG) Alaska pollock (code 701), 15.75 metric tons of headed and gutted (code HG) Pacific cod (code 702), 5.63 metric tons of pollock roe (codes 701 and R respectively) and 5.10 metric tons of fish meal (code M). The required message would be transmitted as follows:

From: M/V SOPOV, LJUJ
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA,
ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

SOPOV/LJUJ/0724D13/0900Z09/5830N16/
17510W14/52//
Received from/NAVIS/LTUX//
701/130.OOHG12//702/15.75HG27/701/
5.63R22//5.IM06//

10. *CEASE report.* Cease reports must be delivered 24 hours before ceasing fishing and departing the EEZ

Example: The stern trawler NAVIS, LTUX, will cease fishing on July 8 at 1215 GMT at position 57°30′ N. latitude, 168°30′ W. longitude in Bering Sea Area 51 (code 51.) The required message would be transmitted as follows:

From: F/V NAVIS, LTUX
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA,
ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

NAVIS/LTUX/0708D15/1215Z09/5730N15/
16830W18/51/CEASE//

11. *CHANGE report.* Change reports must be transmitted and delivered as though they were the original message.

Example: The stern trawler NAVIS, LTUX, was to have begun fishing on March 11 at 1320 GMT at position 59°30′ N. latitude, 142°30′ W. longitude in the Yakutat fishing area of the Gulf of Alaska. Bad weather delayed arrival on the fishing grounds until 1800 GMT on March 12. Since the delay is longer than four hours, a CHANGE report must be sent. Because the message is considered as though it were an original BEGIN report the message must be delivered 24 hours in advance, or before 1800 GMT on March 11. The required message would be transmitted as follows:

From: F/V NAVIS, LTUX

To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA.
ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

CHANGE/NAVIS/LTUX/0311D05/
1320Z06/TO//

NAVIS/LTUX/0312D06/1800Z09/5930N17/
14230W10/64/BEGIN//

12. *CANCEL report.* Cancel reports must be transmitted and delivered prior to the time and date of the event in the original message.

Example: The stern trawler NAVIS, LTUX, was to have begun fishing on March 11 at 1320 GMT at position 59°30' N. latitude, 142°30' W. longitude in the Yakutat fishing area of the Gulf of Alaska and had sent the appropriate BEGIN message. The vessel has had mechanical problems and must return home before entering the EEZ. The required CANCEL message would be transmitted as follows:

From: F/VNAVIS, LTUX
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA.
ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

CANCEL/NAVIS/LTUX/0311D05/
1320Z06/BEGIN//

13. *GROUP reports.* A fleet commander or other authorized person may send in reports for several vessels. An FFV operator submitting a report on behalf of another FFV is assumed to have the authorization to do so.

Example: The refrigerated transport vessel SOPOV, LJUJ, with a fleet commander on board, wishes to report for three stern trawlers in the fleet. The stern trawler NAVIS, LTUX, will begin fishing at 59°30' N. latitude, 142°30' W. longitude, in Yakutat fishing area (code 64) on March 11 at 1320 GMT. The stern trawler FISKVOL, LBEV, will temporarily depart the fishing grounds at 58°05' N. latitude, 149°50' W. longitude in the Kodiak fishing area (code 63) on March 12 at 1200 GMT to embark an observer. The stern trawler ALEXANDROV, LXDV, will cease fishing at 54°40' N. latitude, 157°15' W. longitude in the Chirikof fishing area (code 62) on March 13 at 0800 GMT to return to its home port. The required message would be transmitted as follows:

From: M/V SOPOV, LJUJ
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA, ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

NAVIS/LTUX/0311D05/1320Z06/5930N17/
14230W10/64/BEGIN//
FISKVOL/LBEV/0312D06/1200Z03/
5805N18/14950W19/63/DEPART//
ALEXANDROV/LXDV/0313D07/0800Z08/
5440N13/15715W19/62/CEASE//

Since the illustrated group report contains notice of the beginning of fishing at 1320 GMT on March 11, the message must be delivered to the 17th Coast Guard District Commander not later than 1320 GMT, March 10.

[50 FR 34979, Aug. 28, 1985; 50 FR 43571, Oct. 28, 1985]

APPENDIX C TO SUBPART A—FISHING AREAS

A. Northwest Atlantic Ocean and Hake Fisheries (Figures 1a and 1b.)

1. For the purposes of § 611.4(c) of this part, fishing areas in the Northwest Atlantic are the areas shown in Figure 1a and described below.

Area code, name, and description

21. Atlantic Area 21, Atlantic EEZ between 35°00' N. latitude and 37°00' N. latitude
22. Atlantic Area 22, Atlantic EEZ between 37°00' N. latitude and 39°00' N. latitude
23. Atlantic Area 23, Atlantic EEZ north of 39°00' N. latitude and west of 71°40' W. longitude
24. Atlantic Area 24, Atlantic EEZ enclosed by a line connecting the following points in the order listed—

Point No.	Latitude	Longitude
1	Shore	71°40' W
2	39°00' N	71°40' W
3	39°00' N	70°00' W
4	Cape Cod	70°00' W

25. Atlantic Area 25, Atlantic EEZ between 39°00' N. latitude and 42°20' N. latitude and east of 70°00' W. longitude
26. Atlantic Area 26, Atlantic EEZ north and west of Cape Code and a line connecting the following points in the order listed—

Point No.	Latitude	Longitude
1	Cape Cod	70°00' W
2	42°20' N	70°00' W
3	42°20' N	The eastward limit of the EEZ

2. For the purposes of § 611.4(f) and § 611.9, fishing areas in the Northwest Atlantic are the NMFS "Three digit statistical areas" described in Figure 2b.

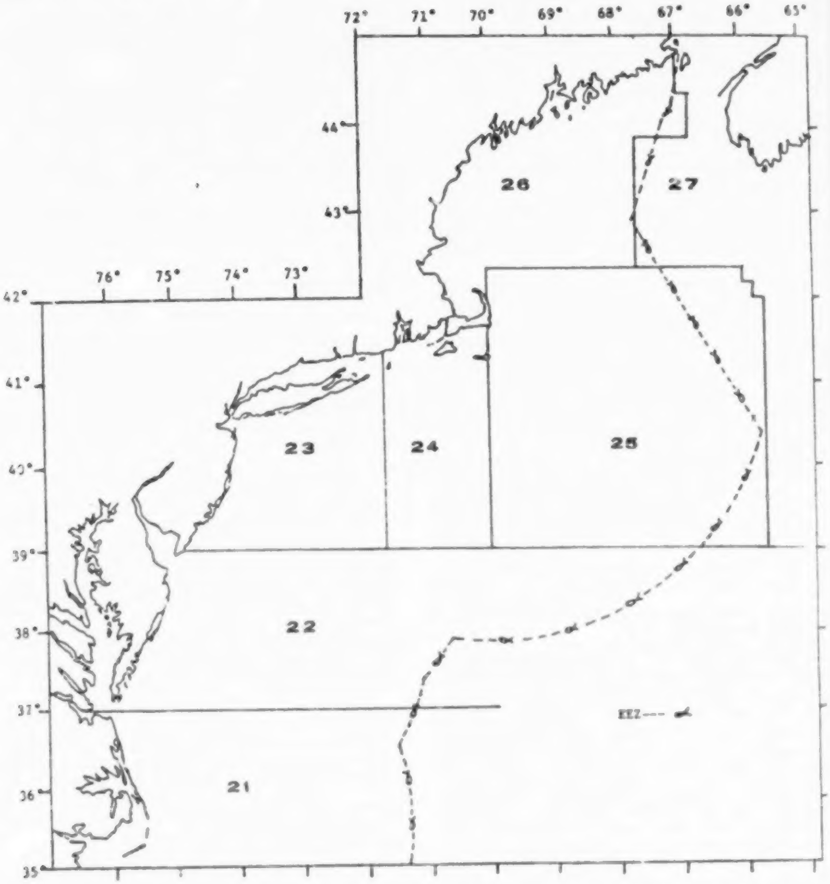
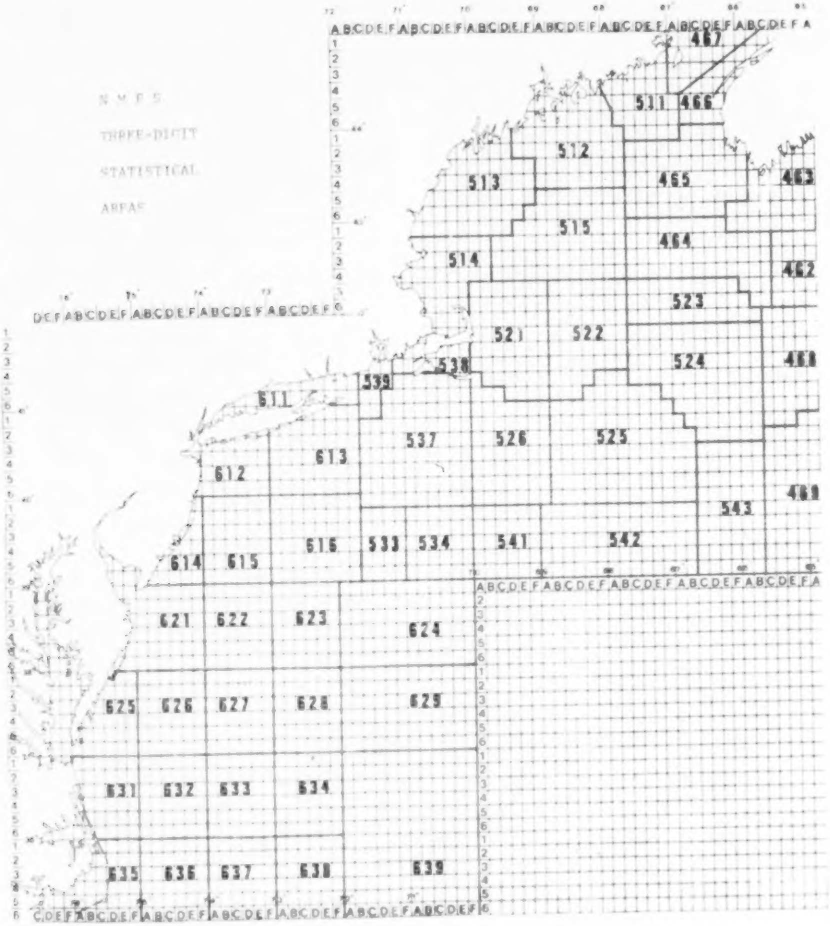

72°
71°
70°
69°
68°
67°
66°
65°
44°
43°
42°
76°
75°
74°
73°
41°
40°
39°
38°
37°
36°
35°
26
27
25
24
23
22
21
EEZ

Figure 1a. to Appendix C: Fishing Areas for the Northwest Atlantic Ocean and Hake Fisheries for the purposes of 50 CFR 611.4(c).


N M F S
THREE-DIGIT
STATISTICAL
AREAS
467
466
511
512
513
465
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523
521
522
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538
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611
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526
525
613
612
543
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616
533
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Figure 1b. to Appendix C: Fishing Areas for the Northwest Atlantic Ocean and Hake Fisheries for the purposes of 50 CFR 611.4(f) (Weekly reports) and 50 CFR 611.9 (Recordkeeping).

B. Atlantic Billfish and Sharks and Royal Red Shrimp Fisheries (Figure 2.)

Area code, Name and description

11. Caribbean Area 11, Virgin Islands. The EEZ off Puerto Rico and the U.S
12. Gulf of Mexico, Area 12. The EEZ in the Gulf of Mexico west of 93°00′ W. longitude
13. Gulf of Mexico, Area 13. The EEZ in the Gulf of Mexico east of 93°00′ W. longitude and west of 88°00′ W. longitude
14. Gulf of Mexico, Area 14. The EEZ in the Gulf of Mexico east of of 88°00′ W. longitude and EEZ in the Atlantic Ocean south of 25°18′ N. latitude
15. Atlantic Area 15. The EEZ in the Atlantic Ocean north of 25°18′ N. latitude and south of 36°30′ N. latitude
16. Atlantic Area 16. The EEZ in the Atlantic Ocean north of 36°30′ N. latitude and south of 41°00′ N. latitude
17. Atlantic Area 17. The EEZ in the Atlantic Ocean north of 41°00′ N. latitude

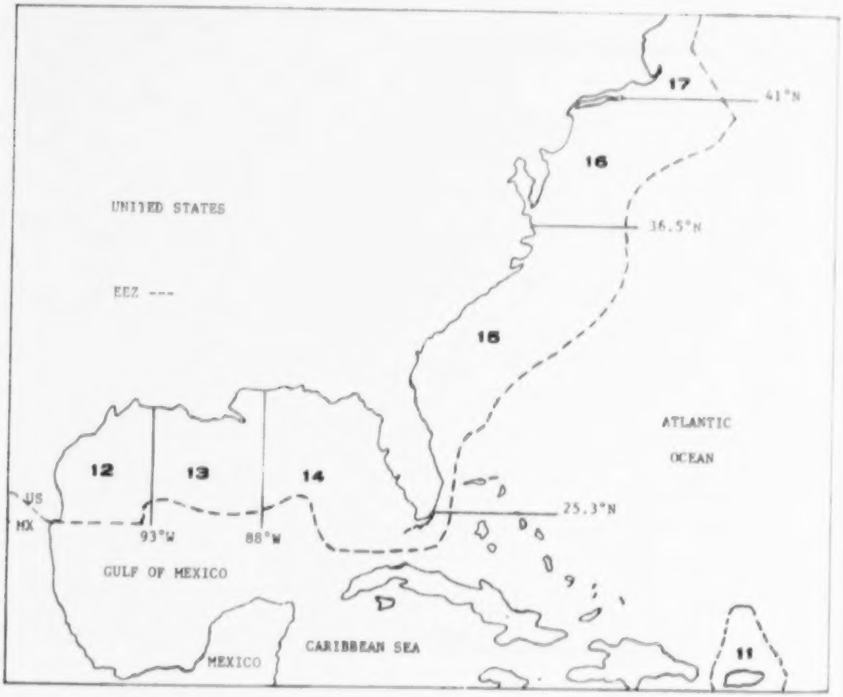

17
41°N
16
UNITED STATES
36.5°N
EEZ ---
15
ATLANTIC
OCEAN
12
13
14
US
MX
93°W
88°W
25.3°N
GULF OF MEXICO
CARIBBEAN SEA
MEXICO
11

Figure 2. to Appendix C: Fishing Areas for the Atlantic Billfish and Sharks and Royal Red Shrimp Fisheries.

C. Pacific Coast Groundfish and Pacific Billfish and Sharks Fisheries (Figure 3.)

Area code, name and description

67. Vancouver. The EEZ of the North Pacific Ocean off Washington north of 47°30′ N. latitude
71. Columbia. The EEZ of the North Pacific Ocean off Washington and Oregon south of 47°30′ N. latitude and north of 43°00′ N. latitude
72. Eureka. The EEZ of the North Pacific Ocean off Oregon and California south of 43°00′ N. latitude and north of 40°30′ N. latitude
73. Monterey. The EEZ of the North Pacific Ocean off California south of 40°30′ N. latitude and north of 36°00′ N. latitude
74. Conception. The EEZ of the North Pacific Ocean off California south of 36°00′ N. latitude

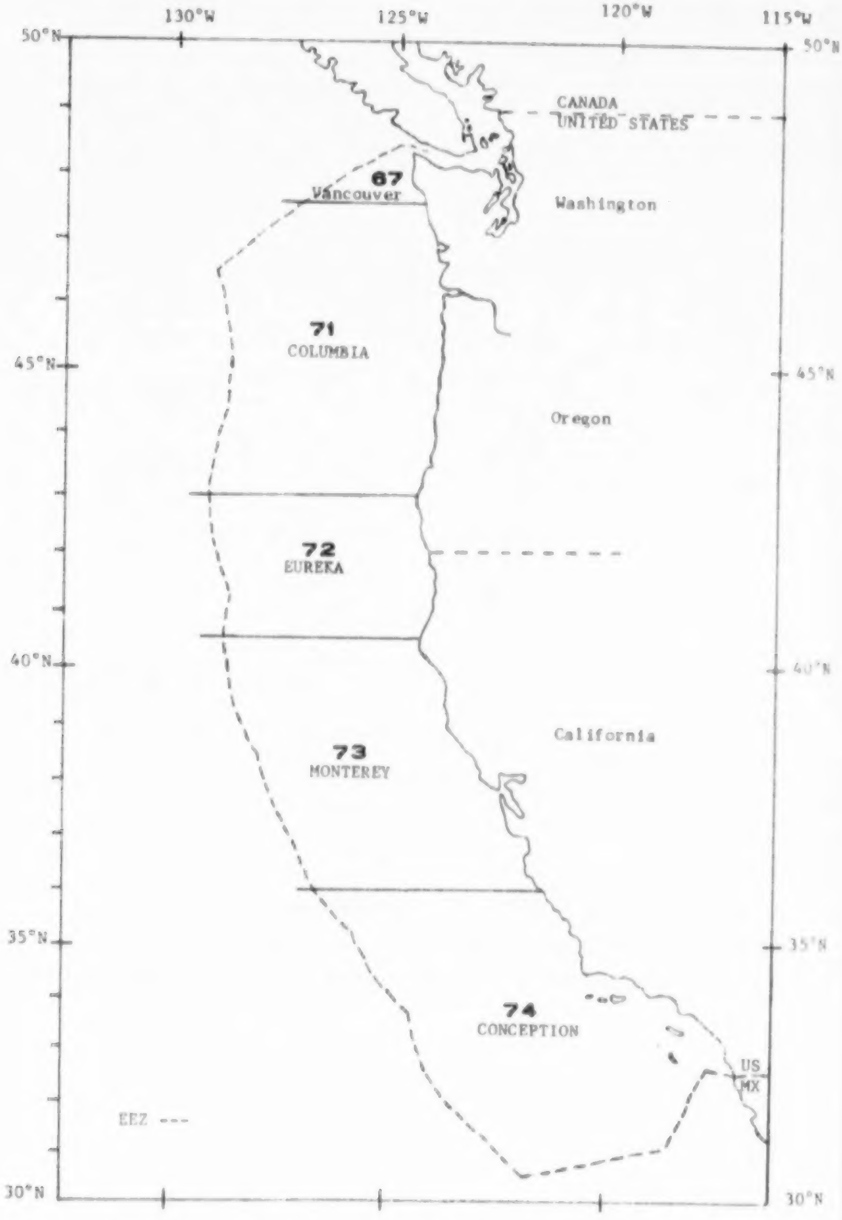

130°W
125°W
120°W
115°W
50°N
45°N
40°N
35°N
30°N
CANADA
UNITED STATES
Washington
Oregon
California
67
Vancouver
71
COLUMBIA
72
EUREKA
73
MONTEREY
74
CONCEPTION
US
MX
EEZ ---

Figure 3. to Appendix C: Fishing Areas for the Pacific Coast Groundfish and the Pacific Billfish and Sharks Fisheries.

D. Seamount Groundfish, Pacific Billfish and Sharks, and Precious Coral Fisheries

Area code, name, and description

81. Hawaii and Midway Islands. The EEZ at the Pacific Ocean off the Hawaiian and Midway Islands
82. Guam and Northern Mariana Islands. The EEZ of the Western Pacific Ocean off Guam and the Northern Mariana Islands
83. American Samoa. The EEZ of the South Pacific Ocean off American Samoa
84. Johnston Atoll. The EEZ off Johnston Atoll
85. Howland and Baker Islands. The EEZ of the Pacific Ocean off Howland and Baker Islands
86. Kingman Reef and Palmyra Atoll. The EEZ of the North Pacific Ocean off Kingman Reef and Palmyra Atoll
87. Jarvis Island. The EEZ of the Pacific Ocean off Jarvis Island.
88. Wake Island. The EEZ of the North Pacific Ocean off Wake Island

E. Gulf of Alaska Groundfish Fishery (Figure 4.)

Area Code, name and description

61. Shumagin. The EEZ of the Gulf of Alaska east of 170°00′ W. longitude and west of 159°00′ W. longitude
62. Chirikof. The EEZ of the Gulf of Alaska east of 159°00′ W. longitude and west of 154°00′ W. longitude
63. Kodiak. The EEZ of the Gulf of Alaska east of 154°00′ W. longitude and west of 147°00′ W. longitude
64. Yakutat. The EEZ of the Gulf of Alaska east of 147°00′ W. longitude and west of 137°00′ W. longitude
65. Southeastern. The EEZ of the Gulf of Alaska east of 137°00′ W. longitude and north of 54°30′ N. latitude
66. Charlotte. The EEZ of the North Pacific Ocean off Alaska south of 54°30′ N. latitude

F. Bering Sea and Aleutian Islands Groundfish and Snail Fisheries (Figure 4.)

Area code, name and description

50. Bering Sea Area 50. For the purposes of § 611.4(c) only, and for the period September 1 through April 30 GMT, an area described by rhumb lines connecting the following points in the order listed

Point No	Latitude	Longitude
1	58°00′ N	175°00′ W
2	58°00′ N	172°00′ W
3	59°30′ N	172°00′ W
4	59°30′ N	175°00′ W
5	58°00′ N	175°00′ W

51. Bering Sea Area 51. The EEZ of the Bering Sea north of the Aleutian Islands and east of 170°00′ W. longitude
52. Bering Sea Area 52. The EEZ of the Bering Sea north of the 55°00′ N. latitude, east of 180° longitude and west of 170°00′ W. longitude.
53. Bering Sea Area 53. The EEZ of the Bering Sea north of the 55°00′ N. latitude, east of the U.S.-Russian convention line of 1867, and west of 170°00′ W. longitude
54. Bering Sea Area 54. The EEZ of the Bering Sea and North Pacific Ocean off Alaska south of 55°00′ N. latitude, east of the U.S.-Russian Convention Line of 1867 and west of 170°00′ W. longitude

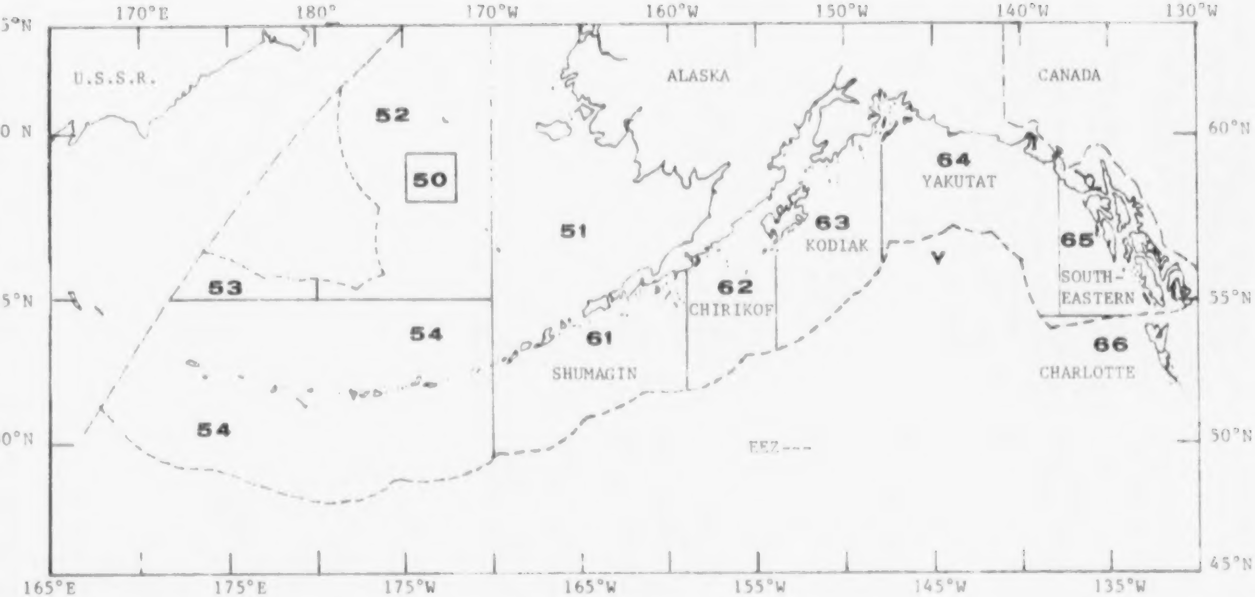

65°N
60 N
55°N
50°N
170°E
180°
170°W
160°W
150°W
140°W
130°W
60°N
55°N
50°N
45°N
165°E
175°E
175°W
165°W
155°W
145°W
135°W
U.S.S.R.
ALASKA
CANADA
52
50
51
53
54
54
61
SHUMAGIN
62
CHIRIKOF
63
KODIAK
64
YAKUTAT
65
SOUTH-
EASTERN
66
CHARLOTTE
EEZ---

Figure 4. to Appendix C: Fishing Areas for the Gulf of Alaska Groundfish, Bering Sea and Aleutian Islands Groundfish, and Snail Fisheries.

[50 FR 34979, Aug. 28, 1985, as amended at 53 FR 24647, June 29, 1988]

APPENDIX D TO SUBPART A—SPECIES CODES

Code	Common name [1]	Scientific name
	A. Atlantic Ocean and Gulf of Mexico Fishes	
	Finfish	
101	Cod, Atlantic	*Gadus morhua*
102	Haddock	*Melanogrammus aeglefinus*
103	Redfish	*Sebastes marinus*
104	Hake, silver	*Merluccius bilinearis*
105	Hake, red	*Urophycis chuss*
106	Pollock	*Pollachius virens*
116	Flounder, yellowtail	*Limanda ferruginea*
176	Scup	*Stenotomus chrysops*
182	Tilefish	*Lopholatilus chamaeleonticeps*
202	Herring, Atlantic	*Harengus harengus*
204	Mackerel, Atlantic	*Scomber scombrus*
206	Great barracuda	*Sphyraena barracuda*
212	Butterfish	*Peprilus triacanthus*
216	Menhaden, Atlantic	*Brevoortia tyrannus*
228	Bluefish	*Pomatomus saltatrix*
237	Pompano dolphin	*Coryphaena equisetis*
238	Dolphin (mahimahi)	*Corphaena hippurus*
240	Mackerel, king	*Scomberomorus cavalla*
252	Sailfish	*Istiophorus platypterus*
254	Longbill spearfish	*Tetrapturus pfluegeri*
255	Wahoo	*Acanthocybium solanderi*
256	Marlin, white	*Tetrapturus albidus*
260	Marlin, blue	*Makaira nigricans*
264	Swordfish	*Xiphias gladius*
309	Herring, river (includes alewife, blueback herring, and hickory shad)	*Alosa pseudoharengus*, *Alosa asetivalis*, and *Alosa mediocris*
310	Shad, American	*Alosa sapidissima*
314	Croaker, Atlantic	*Micropogonias undulatus*
318	Salmon, Atlantic	*Salmo salar*
332	Bass, black sea	*Centropristis striata*
401	Striped bass	*Morone saxatilis*
414	Spot	*Leiostomus xanthurus*
418	Weakfish	*Cynoscion regalis*
462	Porbeagle shark	*Lamna nasus*
463	Longfin mako shark	*Isurus paucus*
464	Shortfin mako shark	*Isurus oxyrinchus*
465	Blue shark	*Prionace glauca*
469	Sharks (NS)	Squaliformes
499	Finfishes (NS) (includes dogfish and non-allocated squid)	Osteichthyes, squalidae, and sepioid and teuthoid squids
	Invertebrates	
502	Squid, long-finned	*Loligo pealei*
504	Squid, short-finned	*Illex illecebrosus*
509	Squid (NS) (See code 499—other finfish)	Sepioid and teuthoid squids
619	Crabs, marine (NS)	
622	Lobster, northern	*Homarus americanus*
630	Royal red shrimp	*Hymenopanaeus robustus*
697	Shrimp (NS)	
699	Invertebrates, marine (NS)	
	B. Pacific Ocean Fishes	
	Finfish	
129	Flatfishes (NS)	Pleuronectiformes
200	Pelagic Armorhead	*Pentaceros richardsoni*
201	Alfonsin	*Beryx splendens*
207	Atka mackerel	*Pleurogrammus monopterygius*
208	Jack mackerel	*Trachurus symmetricus*
209	Pacific herring	*Clupea harengus pallasi*
210	Salmonids (NS)	Salmonidae
237	Pompano dolphin (mahimahi)	*Coryphaena equisetis*
238	Dolphin (mahimahi)	*Coryphaena hippurus*
252	Sailfish	*Istiophorus platypterus*
253	Black marlin	*Makaira indica*
255	Wahoo	*Acanthocybium solanderi*
260	Marlin, blue	*Makaira nigricans*
261	Striped marlin	*Tetrapturus audax*
262	Shortbill spearfish	*Tetrapturus angustirostris*
263	Requiem sharks (NS)	Carcharhinidae
264	Broadbill swordfish	*Xiphias gladius*
265	Thresher sharks (NS)	Alopiidae
266	Mackerel sharks (NS)	Lamnidae
267	Hammerhead sharks (NS)	Sphyrnidae
469	Sharks (NS)	Squaliformes
499	Other species (NS)	See Subparts E, F, and G
500	Non-specified species (NS)	See Subpart G
701	Pollock (walleye, Alaska)	*Theragra chalcogramma*
702	Pacific cod	*Gadus macrocephalus*
703	Sablefish (black cod)	*Anoplopoma fimbria*
704	Pacific whiting (hake)	*Merluccius productus*
720	Yellowfin sole	*Limanda aspera*
722	Pacific halibut	*Hippoglossus stenolepis*
737	Turbot (includes arrowtooth flounder, Greenland halibut and Kamchatka flounder)	(*Atheresthes stomias*, *Reinhardtius hippoglossoides*, and *Atheresthes evermanni*)
780	Pacific ocean perch [2]	*Sebastes alutus*
800	Shortbelly rockfish	*Sebastes jordani*
804	Idiot rockfish	*Sebastolobus* spp
849	Rockfish (NS)	Scorpaenidae
	Invertebrates	
505	Korean horsehair crab	*Erimacrus isenbeckii*
507	Lyre crab	*Hyas lyratus*
509	Squid (NS)	Sepioid and teuthoid squids
527	Black coral (NS)	*Antipathes* spp
529	Clams (NS)	
539	Scallops (NS)	Pectinidae
673	Snail (NS)	Gastropoda
675	King crab	*Paralithodes* spp
676	Tanner crab (NS) (Snow)	*Chionoecetes* spp
682	Corals (NS)	
690	Dungeness crab	*Cancer magister*
697	Shrimp (NS)	
	C. Marine Mammals	
915	Whale, beluga	*Delphinapterus leucas*
930	Whale, false killer	*Pseudorca crassidens*
934	Dolphin, rough-toothed	*Steno bredanensis*
936	Dolphin, Atlantic white-sided	*Lagenorhynchus acutus*

Code	Common name [1]	Scientific name
938	Dolphin, Pacific white-sided	*Lagenorhynchus obliquidens*
940	Dolphin, common	*Delphinus delphis*
941	Dolphin, bottlenosed	*Tursiops truncatus*
942	Dolphin, Risso's (grampus)	*Grampus griseus*
943	Dolphin, spotted	*Stenella attenuata*
944	Dolphin, spinner	*Stenella longirostis*
946	Dolphin, northern right-whale	*Lissodelphis borealis*
947	Porpoise, harbor	*Phocoena phocoena*
949	Porpoise, Dall's	*Phocoenoides dalli*
955	Sea lion, northern	*Eumetopias jubatus*
956	Sea lion, California	*Zalophus californianus*
958	Seal, northern fur	*Callorhinus ursinus*
966	Walrus	*Odobenus rosmarus*
967	Seal, harbor	*Phoca vitulina*
973	Seal, ribbon	*Phoca fasciata*
976	Seal, gray	*Halichoerus grypus*
981	Seal, northern elephant	*Mirounga angustirostris*
985	Sea otter	*Enhydra lutris*
992	Whale, pilot (NS)	*Globicephala* spp
993	Whale, baleen (NS)	Mysticeti
994	Whale, toothed (NS)	Odontoceti
995	Seal (NS)	Other Phocidae
996	Sea lion (NS)	Otaridae
998	Porpoise (NS)	Other Phocoenidae
998	Dolphin (NS)	Delphinidae

D. Other Species

069	Sea turtle (NS)	

[1] (NS) means non-specific as to species. This code must be used for all species of this species group unless a more specific code exists.

[2] Pacific ocean perch in the Alaska fisheries (Subpart G) includes the additional species of red rockfish—

Northern rockfish (*ebastes polyspinas*), Rougheye rockfish (*Sebastes aleutianus*), Shortraker rockfish (*Sebastes borealis*), and Sharpchin rockfish (*Sebastes zacentrus*).

APPENDIX E TO SUBPART A—FISHERY PRODUCT CODES

Fishery product	Code
Canned meat	CN
Fillets, with skin/two per fish	F
Fillets, without skin/two per fish	FN
Fillet, one-piece (butterfly) with skin	FB
Fillet, one-piece (butterfly), without skin	FBN
Fish meal	M
Fish oil	FO
Flounder steaks—diagonal cut from midsection of fish	S
Flounder pieces—punched or stamped from mid-section of fish	ST
Gutted only	G
Gutted and gilled	GG
Headed only	H
Headed and gutted	HG
Headed, gutted, and tails removed	HGT
Heads, separate from remainder of fish	HDS
Intestinal organs separate from remainder of fish	IO
Other product (specify)	O
Otoshimi: Frozen minced fish product (Japan)	OS
Pectoral collars separate from remainder of fish	P
Roe separate from remainder of fish	R
Skate wings	SW
Squid or octopus, beak removed	BSO
Squid or octopus mantles	MSO
Squid or octopus tentacles	TSO
Surimi: Frozen minced fish product (Japan)	SU
Tara Shiniku: Frozen minced fish product (Japan)	TS
Tuszka: heads, guts, fins, tail, and portions of belly flap removed (Poland)	TU
Whole fish	W

APPENDIX F TO SUBPART A—WEEKLY CATCH REPORT

A. Report Form Entries

1. Page numbering: Number each page in sequence and the total number of pages in each submission. For example, the pages of a report for the catches of three vessels would be numbered "Page 1 of 3", Page 2 of 3", and "Page 3 of 3."

2. Vessel name: Enter the vessel name as shown on the permit, flush left, up to 20 characters.

3. IRCS: Enter the vessel's international radio call sign, up to eight characters.

4. Permit number: Enter the current permit number (without hyphens).

5. Week ending date: Enter the month and day on which the weekly reporting period ended. A reporting period begins on Sunday at 0001 hours GMT (except during the first week of each year when it begins on January 1) and ends on Saturday at 2400 hours, GMT (except during the last week of each year when it ends on December 31). Following month/day figure, insert the letter "D" and a confirmation code (2 digit sum of the 4 digits in month/day figure).

For example, for the report period ending on Saturday, April 9, 1983, enter: 0409D13.

6. Area code: Enter the code from Appendix C to this subpart, for each area in which the vessel fished during the reporting period.

7. Days fished: Enter the number of days during which fishing gear was placed in the water in each fishing area duing the reporting period.

8. Species: Enter the code from Appendix D to this subpart for each allocated species caught during the reporting period and the code for each prohibited species caught as required by the fishery in which the FFV is engaged (see Subparts C through G of this part).

9. Catch: Enter the round weight, to the nearest tenth of a metric ton (0.1 mt) by species and area of allocated species caught or received from catching vessels during the reporting period, regardless of whether retained or discarded, and the catch of prohibited species as required by the fishery in

which the FFV is engaged (see Subparts C through G of this part). Entries containing catch weights of fish used for human consumption or used for fish meal (disposition "C" or "M") must be based on the most accurate method available to the vessel, either scale round weights or factory weights converted to round weights. Entries containing catch weights of discarded fish (disposition "D") must be based on the most accurate method available, either scale round weights, estimated deck weights, or number, as required by the fishery. Following the catch figure, insert the letter "D" and a confirmation code (2 digit sum of the digits in the species code and catch figure).

10. Designated representative: Enter the name of the designated representative who is responsible for submitting reports for the foreign nation.

11. Date: Enter the date the report is submitted to the NMFS by the designated representative.

B. Telex Reports

1. To ensure receipt of the Weekly Catch Report on time, Telex reports may be used. If a Telex report is submitted, a completed copy of the report form must be mailed as confirmation. Designated representatives may include several vessel reports in one Telex message, provided it is submitted on a vessel-by-vessel basis.

2. Reports submitted by Telex must contain the message identifier "CATREP" as the first group of the text to indicate that the information which follows constitutes a Weekly Catch Report. Data should be submitted as follows:

Vessel name/IRCS/Permit number/(Week ending date)D(confirmation code-CC)//
Area/Days fished//
Species/(Catch)P(CC)//Species/(Catch)P(CC)//etc.//
Area/Days fished//
Species/(Catch)P(CC)//Species/(Catch)P(CC)//etc.//

C. Example

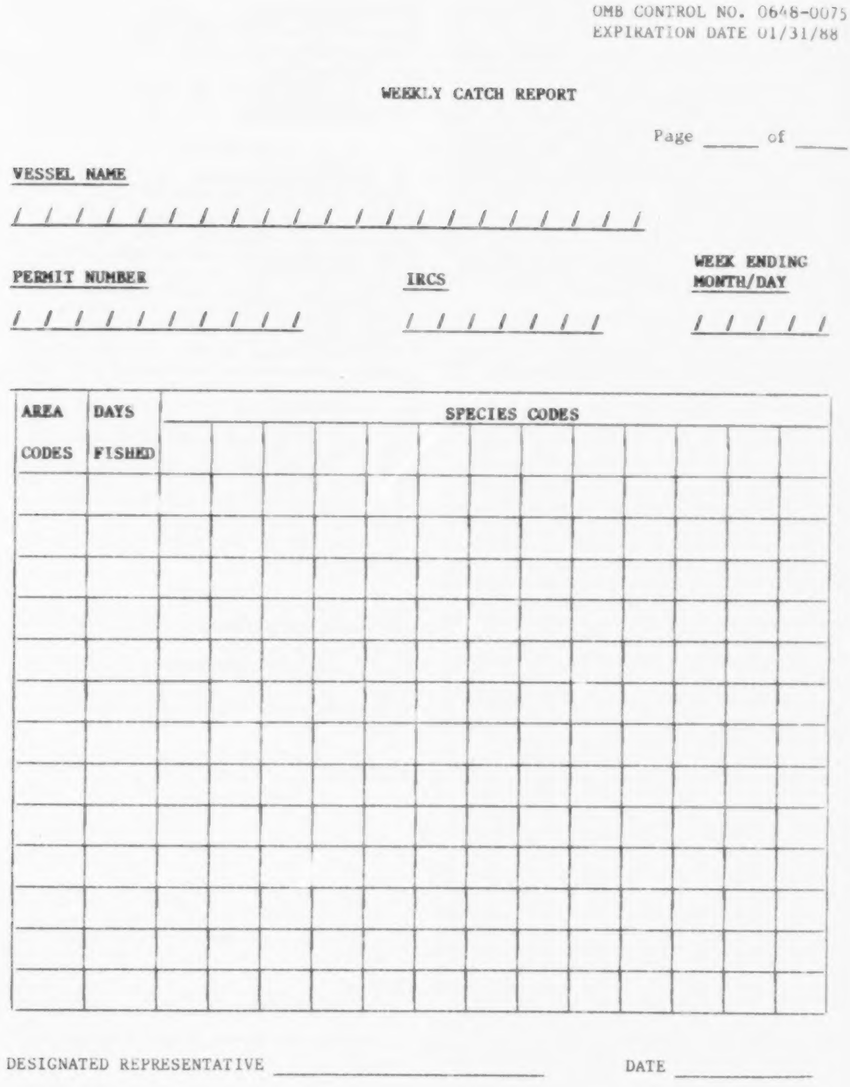
1. The stern trawler NAVIS, LTUX, permit number LT-83-0001-A, entered the EEZ on Sunday, March 13, 1983, began fishing in the Yakutat area (code 64) of the Gulf of Alaska on March 15, and continued fishing in that area the morning of March 16. The afternoon of March 16 the vessel shifted to the Kodiak area (code 63), began fishing that evening, and continued fishing through Saturday, March 19, 1983. (Note that March 16 counts as a day fished in *both* area 64 and area 63). In the Yakutat area the vessel caught 121.6 tons of pollock (code 701), 17.8 tons of Pacific ocean perch (code 780), and 8.0 tons of Atka mackerel (code 207). In the Kodiak area the vessel caught 23.4 tons of pollock, 23.7 tons of Pacific ocean perch, 86.4 tons of Atka mackerel, and 0.4 tons of sablefish (code 703).

2. The text of the Telex report would appear as follows:

CATREP

NAVIS/LTUX/LT830001A/0319D13//
64/2//
701/121.6P18//780/17.8P31//207/8.0P17//
63/4//
701/23.4P17//780/23.7P27//207/86.4P27//
703/0.4P14//

3. The completed form would appear as follows:



OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

WEEKLY CATCH REPORT

Page _____ of _____

VESSEL NAME

/ /

PERMIT NUMBER

/ / / / / / / / / / /

IRCS

/ / / / / / / /

WEEK ENDING MONTH/DAY

/ / / / /

AREA CODES	DAYS FISHED	SPECIES CODES												

DESIGNATED REPRESENTATIVE ______________________ DATE __________

Figure 1. to Appendix F

APPENDIX G TO SUBPART A—WEEKLY JOINT VENTURE RECEIPTS REPORT

A. Report From Entries

1. Page numbering, vessel name, IRCS, permit number, week ending date, area code, designated representative, and date must be entered in accordance with the instructions for the Weekly Catch Report contained in Appendix F paragraphs A. 1-6, 10 and 11.

2. Vessels delivering (V): Enter the number of U.S. vessels which transferred codends in each area during the reporting period.

3. Codends received (T): Enter the number of codends received from U.S. vessels which were caught in that area.

4. Species: Enter the code from Appendix D to this subpart of each authorized or prohibited species or species group received during the reporting period.

5. Amounts received: Enter the round weight, to the nearest tenth of a metric ton (0.1 mt), by species and area, of species received from vessels of the U.S. during the reporting period and as required by the regulations of the fishery in which the FFV is engaged (see Subparts C through G of this part). After the amount, enter the letter "P" to indicate the final disposition of the receipts as: processed, frozen, eaten by the crew, or otherwise used for human consumption (disposition C), whether or not part of the catch went to fishmeal or oil; used for fishmeal (disposition M); or discarded (disposition D). Enter the letter "R" to indicate the receipts which were subsequently returned to the U.S. vessel (disposition R), when allowed by the fishery in which the FFV is engaged. Entries containing receipt weights (disposition "C" or "M") must be based on the most accurate method available to the vessel, either scale round weights or factory weights converted to round weights. Entries for discards or returns (disposition "D" or "R") must be based on the most accurate method available to the vessel, either scale round weight, estimated deck weight, or number, as required by the fishery. After the code letter, enter a confirmation code (2 digit sum of the digits in species code and amounts received figure).

6. Participating vessels: Enter the names of U.S. vessels transferring codends to the FFV during the reporting period.

B. Telex Reports

1. To ensure receipt of the Weekly Joint Venture Receipts Report on time, Telex reports may be used. If a Telex report is submited, a completed copy of the report form must be mailed as confirmation. Designated representatives may include several vessel reports in one Telex message, provided it is submitted on a vessel-by-vessel basis

2. Reports submitted by Telex must contain the message identifier "RECREP" as the first group of the text to indicate that the information which follows constitutes a Weekly Joint Venture Receipt Report. Data should be submitted as follows:

Vessel name/IRCS/Permit number/(Week ending date)D(confirmation code)//Area//
Species/(Amount received) (Disposition "P" or "R") (confirmation code)/Species/(Amount received) (Disposition) (confirmation code)//etc.//
Number of vessels transferring codends//Codends transferred//Area//
Species/(Amount received) (Disposition) (confirmation code)//Species/(Amount received) (Disposition) (confirmation code)//etc.//
Number of vessels transferring codends//Codends transferred//
Name of participating vessel//Name of participating vessel//etc.//

C. Example

1. The stern trawler NAVIS, LTUX, operating under permit number LT-83-0001-A which authorizes the receipt of U.S. harvested Alaska pollock and other associated species in the Bering Sea and Aleutian Islands groundfish fishery, received 26 codends from the U.S. vessesl LUCKY, MARY J, EMILY J, and LINDA C in the Bering Sea area 52 from June 5 through June 8, 1983, containing the following species and amounts: Alaska pollock (code 701), 156.3 mt; rockfishes (code 849), 0.2 mt; Pacific cod (code 702), 27.0 mt; turbot (code 737), 5.0 mt; and other species (code 499 4.9 mt. The codends also contained 25 salmon, a prohibited species required to be logged by number in the Bering Sea and Aleutian Islands groundfish fishery (see § 611.92). On June 8, NAVIS shifted its area of operations and received 20 codends from the U.S. vessels, MARY J, EMILY J, and LINDA C in Bering Sea area 54 from June 8 through June 11. NAVIS received the following species and amounts: Alaska pollock (code 701), 75.4 mt; rockfishes (code 849), 3.1 mt; Pacific cod (code 702), 30.2 mt; turbot (code 737), 7.5 mt; and other species (code 499), 7.1 mt. The codends contained 15 salmon and 20 halibut, both prohibited species required to be logged by number in the fishery.

2. The text of the Telex report would appear as follows:

RECREP

NAVIS/LTUX/LT830001A/061D08//
52/4//
701/156.3P23//849/0.2P23//702/27.0P18//737.5.0P22//499/4.9P35//

```
210/25P10//V4//T26//
54/4//
701/75.4P24//849/3.1P25//702/30.2P14//737/7.5P29//499/7.1P30//
210/15P10//722/20P13//V3//T20//
LUCKY//MARY J//EMILY J//LINDA C//
```

The completed form would appear as follows:

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

WEEKLY JOINT VENTURE RECEIPTS REPORT

Page_____of_____

VESSEL NAME

/ /

PERMIT NUMBER

/ / / / / / / / / /

IRCS

/ / / / / / /

WEEK ENDING MONTH/DAY

/ / / / /

AREA CODE	DAYS FISH REC'D	VSLS DEL'D	CODENDS REC'D	SPECIES CODES								

PARTICIPATING VESSELS

DESIGNATED REPRESENTATIVE ____________________　DATE __________

Figure 1. to Appendix G

APPENDIX H TO SUBPART A—WEEKLY MARINE MAMMAL REPORT

A. Report Form Entries

1. Page numbering, vessel name, IRCS, permit number, designated representative, and date must be entered in accordance with the instructions for the Weekly Catch Report contained in Appendix F, paragraphs A, 1-4, 10, and 11.

2. For each mammal caught enter—

a. Date caught. Enter the month and day e.g., for May 6, 1983, enter: 0506;

b. Latitude and longitude to the nearest degree;

c. Species code from Appendix D to this subpart;

d. Status code as follows: 1—Killed during capture; 2—Injured during capture; 3—Dead before capture (decomposed); and 4—Uninjured; and

e. Number of mammals caught where two or more of the same species and status were caught together.

f. Flag or nation of registry of vessel that caught the marine mammal.

B. Telex Reports

1. To ensure receipt of the Weekly Marine Mammal Report on time, Telex reports may be used. If a Telex report is submitted, a completed copy of the report form must be mailed as confirmation. Designated representatives may include several vessel reports in one Telex message provided it is submitted on a vessel-by-vessel basis.

2. Reports submitted by Telex must contain the message identified "MAMREP" as the first group of the text to indicate that the information which follows constitutes a Weekly Marine Mammal Report. Data should be submitted as follows:

Vessel name/IRCS/Permit number//
Date/Latitude/Longitude/Species/
Condition/Number caught/Flag of vessel catching mammal//
Date/Latitude/Longitude/Species/
Condition/Number caught/Flag of vessel catching mammal//

C. Example

1. The stern trawler NAVIS, LTUX, permit number LT-83-0001-A, began fishing in the Bering Sea Area 52 on April 27, 1983. No marine mammals were taken incidental to fishing activities until May 15 when two harbor seals (code 967) were taken at 56°10' N. latitude, 171°25' W. longitude. One was killed during retrieval of the trawl and the other was uninjured. On May 17, at 56°35' N. latitude, 171°40' W. longitude, a northern sea lion (code 955) was injured during capture by a U.S. vessel delivering its catch to the NAVIS.

2. The text of the Telex report would appear as follows:

MAMREP

NAVIS/LTUX/LT830001A//
0515/56N/171W/967/1/1/LT//
0515/56N/171W/967/4/1/LT//
0517/57N/172W/955/2/1/US//

3. The completed form would appear as follows:

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

WEEKLY MARINE MAMMAL REPORT

Page_____of_____

VESSEL NAME

/ /

PERMIT NUMBER

/ / / / / / / / / /

IRCS

/ / / / / / /

MONTH/DAY

/ / / / /

CONDITION CODES
1. KILLED DURING CAPTURE
2. INJURED DURING CAPTURE
3. DEAD BEFORE CAPTURE (DECOMPOSED)
4. UNINJURED

RECORD THE CATCH OF INDIVIDUAL ANIMALS UNLESS TWO OR MORE WERE TAKEN TOGETHER AND WERE IN THE SAME CONDITION

DATE (MM/DD)	LATITUDE (DEGREES)	LONGITUDE (DEGREE)	SPECIES CODE	STATUS CODE	NUMBER	FLAG

DESIGNATED REPRESENTATIVE __________________________ DATE _____________

Figure 1. to Appendix H

APPENDIX I TO SUBPART A—DAILY FISHING LOG

A. Format

1. The log must contain entries for each day of fishing. Each page of the log may contain entries pertaining to only one day's fishing operations or one gear set, whichever is longer.

2. Each day's entries must be divided into three sections. The sections are not required to be on the same page of the log. There may be more or fewer lines and columns in each section to accommodate fishing operations and factory production. The sections must include:

(a) Section One: Vessel particulars and fishing effort.

(b) Section Two: Catch statistics.

(c) Section Three: Production statistics.

3. Each log must contain a cover page with the vessel name, IRCS, and permit number.

B. Format entries

1. Section One—Effort (to be completed within 2 hours after the beginning of the day or 2 hours after the hauling time, as appropriate):

(a) Date: Enter the date based on GMT on which the catch was taken.

(b) Vessel name: Enter name.

(c) IRCS: Enter international radio call sign or other vessel identification as required by 50 CFR 611.5(a)(2).

(d) U.S. permit number: Enter vessel's permit number.

(e) Noon position: Enter the vessel's geographic coordinates (latitude/longitude to the nearest 0.1 of a minute) at noon (1200 hours) GMT.

(f) Noon weather: Enter the observed weather (optional).

(g) Master: Enter master or operator's signature and title.

(h) Trawl or set number: Enter consecutive numbers for each trawl or set made, beginning with the first trawl or set completed in the current calendar year.

(i) Fishing area number: Enter the code number (from Appendix C to this subpart) of the fishing area where each trawl or set was completed.

(j) Gear type: Enter the abbreviation for type of gear used as described below.

Gear type	Standard abbreviation
Bottom otter trawl (side)	OTB-1
Bottom otter trawl (stern)	OTB-2
Off-bottom otter trawl (see § 611.50(d)(5) for definition of this gear)	OTB-3
Midwater otter trawl (side)	OTM-1
Midwater otter trawl (stern)	OTM-2
Bottom pair trawl	PTB
Midwater pair trawl	PTM
Purse seine	PS
Gillnets (set)	GNS
Gillnets (drift)	GND
Gillnets (fixed)	GNF
Longlines (set)	LLS
Longlines (drift)	LLD
Traps or Pots	FIX
Danish seine	DS
Miscellaneous gears (other than above)	MLS

(k) Set time: Enter the time based on GMT at which each set or trawl began. For trawls, this is the time of the net first reaches the fishing level and the winches stop paying out cable. For longline, pot, and gillnet vessls, this is the time the first section of gear is placed in the water.

(l) Set position: Enter the geographic coordinates (latitude/longitude) where each trawl or set began. For trawls, this is the position at which the net reaches the fishing level and the winches stop paying out cable. For longline, pot, and gilinet vessels, this is the position where the first section of gear is placed in the water.

(m) Course of set: Enter the vessel's course (degrees true) at the set time at which each trawl or set began.

(n) Sea depth: Enter the average sea depth in meters.

(o) Depth of set: Enter the average depth in meters at which the gear was set or towed.

(p) Duration of set: Enter the elapsed time in minutes from the set time to the hauling time of each set or trawl.

(q) Hauling time: Enter the ending time based on GMT when each trawl or set was hauled. For trawls this is the time the net begins to be hauled up. For longline, pot, and gillnet vessels, this is the time that retrieval of the gear is complete.

(r) Hauling position: Enter the geographic coordinates (latitude/longitude) at which the set or trawl was hauled. For trawls this is the position at which the net begins to be hauled up. For longline, pot, and gillnet vessels this is the position of the last section or end of the gear.

(s) No. of pots or longline units: For longline or gillnet vessels only, enter the number of longline or gillnet units (specify the length in fathoms per unit). For pot vessels only, enter the number of pots set.

(t) No. of hooks per longline unit: For longline vessels only, enter the average number of hooks per unit of groundline.

(u) Trawl speed: For trawlers only, enter the average speed to the nearest tenth of a knot at which the gear was towed.

(v) Net mesh size: Enter the millimeter mesh size of the cod end (trawlers) or gillnet (measured when wet after stretching, from the inside of one knot to the inside of the opposing knot).

(w) Estimated haul weight: Enter the estimated total weight of the catch for the trawl or set to at least the nearest metric ton round weight.

2. Section Two—Catch (to be completed within 12 hours after the end of the trawl or set or within 12 hours after the end of the day, as appropriate):

(a) Species: Enter the species code for each species caught for which there is an applicable national allocation, even if the fish are discarded. Use the appropriate species code from Appendix D to this subpart.

(b) Set/trawl number: Enter the number corresponding with sets or trawls listed in Section One.

(c) Catch: Enter the catch by species and by trawl or set, to at least the nearest tenth of a metric ton (0.1 mt) round weight. Enter zero (0) if there was no catch of a listed species.

(d) Daily disposition: For each species, specify the daily disposition to at least the nearest 0.1 mt as follows: Enter under "C" the round weight of fish consumed on board and for fish which are frozen in whole or in part or otherwise processed other than for fishmeal; enter under "M" the weight of whole fish which are processed for fishmeal or oil; and enter under "D" the round weight of whole fish which are discarded. The entries under "C" must be for round weight even though some part of the fish is used for fishmeal or oil.

(e) Area total: Enter the total daily catch by species in each fishing area in which the fish were caught, to at least the nearest 0.1 mt round weight.

(f) Daily total: Enter the total daily catch by species, to at least the nearest 0.1 mt round weight.

(g) Cumulative total: Enter the cumulative total catch by species, to at least the nearest 0.1 mt round weight.

(h) Total catch:

(1) Daily total: Enter the daily total for all species to at least the nearest 0.1 mt round weight for each category of disposition (C, M, and D) and each fishing area.

(2) Cumulative total: Enter the cumulative total for all species to at least the nearest 0.1 mt round weight for each category of disposition (C, M, and D).

(i) Prohibited species: Enter the species code, the number of individual animals or parts, or the round weight to at least the nearest 0.1 mt of all prohibited species discarded from each set or trawl as required by the fishery in which the FFV is engaged (see Subparts C through G of this part). Enter the daily and cumulative total for each prohibited species.

(j) Marine mammals: Enter the species code from Appendix D to this subpart, number of animals caught (if more than one of the same species and condition), and condition code (1—Killed during capture; 2—Injured during capture; 3—Dead before capture (decomposed); and 4—Uninjured) for each incident.

3. Section Three—Production (to be completed within 12 hours after the end of the day):

(a) Species: Enter the species code from Appendix D to this subpart for each species caught for which there is a national allocation.

(b) Products: Enter the product code from Appendix E to this subpart for each frozen or canned product produced.

(c) PRR %: Enter the daily product recovery rate (PRR) to the nearest percentage (example: 27%) for each type of product per species. This is a ratio expressed as a percentage of the weight of processed product divided by the round weight of fish used to produce that amount of product.

(d) Daily total: Enter the daily total of each product produced per species to at least the nearest hundredth of a metric ton (0.01 mt).

(e) Cumulative total: Enter the cumulative total of each product produced per species to at least the nearest hundredth of a metric ton (0.01 mt).

(f) Amount transferred: Enter the cumulative total of each product per species transferred off the vessel either inside or outside of the EEZ (including products delivered to a port by the fishing vessel) to at least the nearest 0.01 mt.

(g) Balance: Enter the cumulative total of each product per species aboard the vessel to at least the nearest 0.01 mt.

(h) Total frozen product: Enter the total for all species to at least the nearest 0.01 mt of the daily total, cumulative total, amount transferred, and quantity remaining onboard.

(i) Meal and Oil:

(1) Daily total: Enter the daily total produced to at least the nearest 0.01 mt.

(2) Cumulative total: Enter the cumulative total produced to at least the nearest 0.01 mt.

(3) Amount transferred: Enter the cumulative total transferred to at least the nearest 0.01 mt.

(4) Balance: Enter the cumulative total aboard the vessel to at least the nearest 0.01 mt.

(j) A daily fishing log form is illustrated below.

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

DAILY FISHING LOG

SECTION ONE - EFFORT

PAGE NO	DATE			VESSEL NAME	IRCS	U S PERMIT NUMBER	NOON POSITION		NOON WEATHER	WIND		WEATHER	BAROMETER	SEA CONDITION	AIR WATER TEMPERATURE	MASTER OR OPERATOR
	Year	Month	Day				Latitude	Longitude		DIRECTION	FORCE					

TRAWL OR SET NO	FISHING AREA NO	GEAR TYPE	SET TIME (GMT)	SET POSITION	COURSE OF SET	SEA DEPTH (METERS)	DEPTH OF SET (METERS)	DURATION OF SET (MINUTES)	HAULING TIME (GMT)	HAULING POSITION	NO OF POTS OR LONGLINE UNITS	NO OF HOURS PER LONGLINE UNIT	TRAWL SPEED	TRAWL MESH SIZE COD END	

U.S. INSPECTION	REMARKS:
OFFICER:	
DATE:	

Figure 1a. to Appendix I: Daily Fishing Log

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

SECTION TWO - CATCH

SPECIES / VESSEL														
													TOTAL CATCH DAILY TOTAL	TOTAL CATCH CUM TOTAL
DAILY DISPOSITION C														
DAILY DISPOSITION M														
DAILY DISPOSITION D														
AREA TOTAL														
AREA TOTAL														
AREA TOTAL														
DAILY TOTAL														
CUMULATIVE TOTAL														

PROHIBITED SPECIES			

MARINE MAMMALS		
SPECIES CODE	NUMBER	STATUS CODE

SECTION THREE - PRODUCTION

FROZEN PRODUCT																		
SPECIES / PRODUCT																		TOTAL FROZEN PRODUCT
PRR'S																		
DAILY TOTAL																		
CUMULATIVE TOTAL																		
AMOUNT TRANSFERRED																		
BALANCE																		

MEAL AND OIL		
	MEAL	OIL
DAILY TOTAL		
CUM TOTAL		
AMOUNT TRANSFERRED		
BALANCE		

Figure 1b. to Appendix I: Daily Fishing Log

best copy available

APPENDIX J TO SUBPART A—DAILY CONSOLIDATED LOG

A. Format

1. The log must contain entries for each day of fishing. Each page of the log may contain entries pertaining to only one day's fishing operations. Only one day's entries may be made on each page of the log.

2. Each page must be divided into three sections. The sections are not required to be on the same page of the log. There may be more or fewer lines and columns in each section to accommodate fishing operations and factory production. The sections must include:

(a) Section One: Vessel particulars and fishing effort.

(b) Section Two: Catch statistics.

(c) Section Three: Production statistics.

3. Each log must contain a cover page with the vessel name, IRCS, and permit number.

B. Form Entries

1. Section One—Effort (to be completed within 2 hours of the beginning of the day):

(a) Date: Enter the date based on GMT on which the catch was taken.

(b) Vessel name: Enter name.

(c) IRCS: Enter international radio call sign.

(d) U.S. permit number: Enter vessel's permit number.

(e) Noon position: Enter the vessel's geographic coordinates (latitude/longitude) at noon (1200 hours) GMT.

(f) Noon weather: Enter the observed weather (optional).

(g) Master: Enter master or operator's signature and title.

2. Section Two—Catch (to be completed within 12 hours after the end of the day):

(a) Vessel/IRCS: Enter the name of the foreign catching vessel transferring codends to the foreign processing vessel and its IRCS or other required vessel identification.

(b) Species: Enter the species code for each species caught for which there is an applicable national allocation, even if the fish are discarded. Use the appropriate species code from Appendix D to this subpart.

(c) Fishing area: Enter the fishing area, using the code from Appendix C to this subpart, where the fish were caught. If a catching vessel catches fish in more than one area, a separate line entry must be made for each area.

(d) Catch: Enter the catch by species of each catching vessel in that area during the day, to at least the nearest tenth of a metric ton (0.1 mt) round weight. Enter zero (0) if there was no catch of a listed species.

(e) Daily disposition: For each species, specify the daily disposition to at least the nearest 0.1 mt as follows: Enter under "C" the round weight of fish consumed on board and for fish which are frozen in whole or in part or otherwise processed other than for fishmeal or oil; enter under "M" the round weight of whole fish which are processed for fishmeal or oil; enter under "D" the round weight of whole fish which are discarded. The entries under "C" must be for round weight even though some part of the fish is used for fishmeal or oil.

(f) Area total: Enter the total daily catch by species in each fishing area in which the fish were caught, to at least the nearest 0.1 mt round weight.

(g) Daily total: Enter the total daily catch by species, to at least the nearest 0.1 mt round weight.

(h) Cumulative total: Enter the cumulative total catch by species, to at least the nearest 0.1 mt round weight.

(i) Total catch:

(1) Daily total: Enter the daily total for all species to at least the nearest 0.1 mt round weight for each category of disposition (C, M, and D) and each fishing area.

(2) Cumulative total: Enter the cumulative total for all species to at least the nearest 0.1 mt round weight for each category of disposition (C, M, and D).

(j) Prohibited species: Enter the species code, the number of individual animals or parts, or the round weight to at least the nearest 0.1 mt of prohibited species received from each harvesting vessel as required by the fishery in which the FFV is engaged. Enter the daily and cumulative total for each prohibited species.

(k) Marine mammals: Enter the species code from Appendix D to this subpart, number of animals received (if more than one of the same species and condition), condition code (1—Killed during capture; 2—Injured during capture; 3—Dead before capture (decomposed); and 4—Uninjured) for each incident.

3. Section Three—Production (to be completed within 12 hours after the end of the day):

(a) Species: Enter the species code from Appendix D to this subpart for each species caught for which there is a national allocation.

(b) Products: Enter the product code from Appendix E to this subpart for each frozen or canned product produced.

(c) PRR %: Enter the daily product recovery rate (PRR) to the nearest percentage (example: 27%) for each type of product per species. This is a ratio expressed as a percentage of the weight of processed product divided by the round weight of fish used to produce that amount of product.

(d) Daily total: Enter the daily total of catch product produced per species to at least the nearest hundredth of a metric ton (0.01 mt).

(e) Cumulative total: Enter the cumulative total of each product produced per species to at least the nearest hundredth of a metric ton (0.01 mt).

(f) Amount transferred: Enter the cumulative total of each product per species transferred off the vessel either inside or outside of the EEZ (including products delivered to a port by the fishing vessel) to at least the nearest 0.01 mt.

(g) Balance: Enter the cumulative total of each product per species aboard the vessel to at least the nearest 0.01 mt.

(h) Total frozen product: Enter the total for all species to at least the nearest 0.01 mt of the daily total, cumulative total, amount transferred, and quantity remaining onboard.

(i) Meal and Oil:

(1) Daily total: Enter the daily total produced to at least the nearest 0.01 mt.

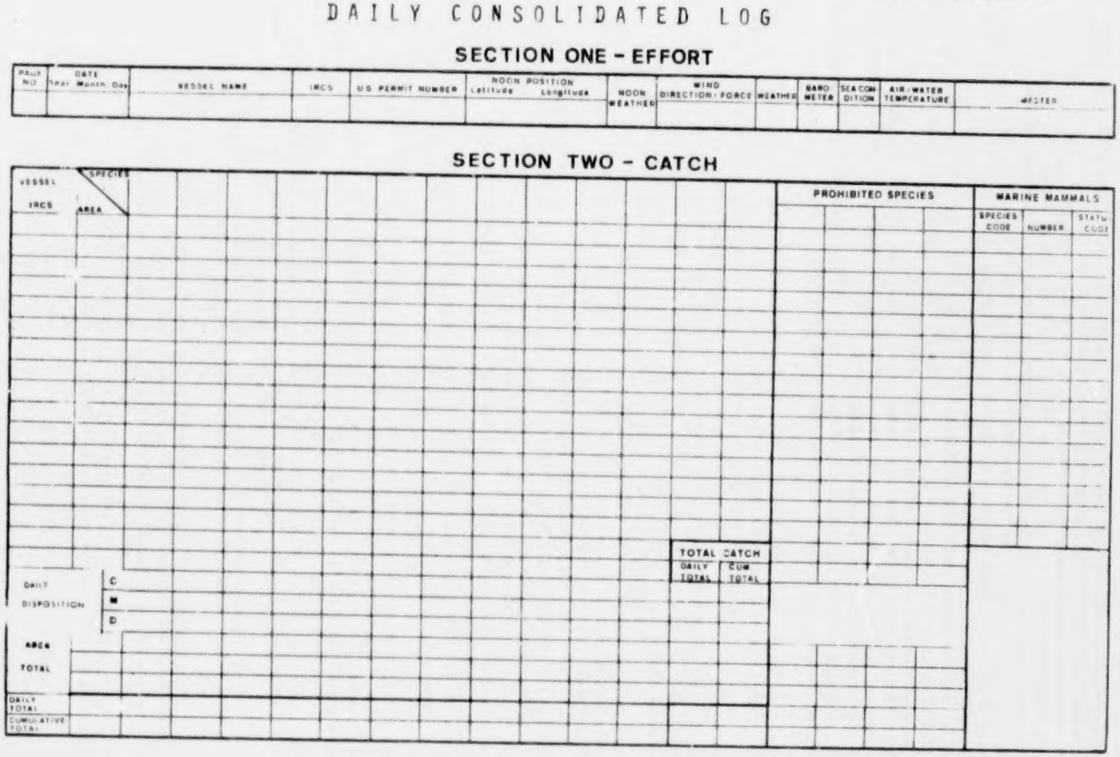
(2) Cumulative total: Enter the cumulative total produced to at least the nearest 0.01 mt.

(3) Amount transferred: Enter the cumulative total transferred to at least the nearest 0.01 mt.

(4) Balance: Enter the cumulative total aboard the vessel to at least the nearest 0.01 mt.

(j) A daily consolidated log form is illustrated below:

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88



DAILY CONSOLIDATED LOG

SECTION ONE - EFFORT

PAGE NO	DATE Year Month Day	VESSEL NAME	IRCS	U.S. PERMIT NUMBER	NOON POSITION Latitude Longitude	NOON WEATHER	WIND DIRECTION/FORCE	WEATHER	BAROMETER	SEA CONDITION	AIR/WATER TEMPERATURE	[illegible]

SECTION TWO - CATCH

VESSEL
IRCS
SPECIES
AREA

PROHIBITED SPECIES

MARINE MAMMALS
SPECIES CODE
NUMBER
STATUS CODE

TOTAL CATCH
DAILY TOTAL
CUM TOTAL

DAILY DISPOSITION
C
M
D

AREA TOTAL

DAILY TOTAL

CUMULATIVE TOTAL

Figure 1a. to Appendix J: Daily Consolidated Log.

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

SECTION THREE - PRODUCTION

FROZEN PRODUCT

SPECIES PRODUCT																		TOTAL FROZEN PRODUCT
PRR'S																		
DAILY TOTAL																		
CUMULATIVE TOTAL																		
AMOUNT TRANSFERRED																		
BALANCE																		

MEAL AND OIL

	MEAL	OIL
DAILY TOTAL		
CUM TOTAL		
AMOUNT TRANSFERRED		
BALANCE		

U.S. INSPECTION	REMARKS:
OFFICER:	
DATE:	

Figure 1b. to Appendix J: Daily Consolidated Log.

APPENDIX K TO SUBPART A—DAILY JOINT VENTURE LOG

A. Format

1. The log must contain entries for each day of fishing. Each page of the log may contain entries pertaining to only one day's fishing.

2. Each day's entries must be divided into three sections. The sections are not required to be on the same page of the log. There may be more or fewer lines and columns in each section to accommodate fishing operations and factory production. The sections must include:

(a) Section One: Vessel particulars and fishing effort.

(b) Section Two: Catch statistics.

(c) Section Three: Production statistics.

3. Each log must contain a cover page with the vessel name, IRCS, and permit number.

B. Form Entries

1. Section one—Effort (to be completed within 2 hours after the beginning of the day or within 2 hours after the receipt time, as appropriate);

(a) Date: Enter the date based on GMT on which the catch was taken.

(b) Vessel name: Enter name.

(c) IRCS: Enter international radio call sign.

(d) U.S. permit number: Enter vessel's permit number.

(e) Noon position: Enter the vessel's geographic coordinates (latitude/longitude) at noon (1200 hours) GMT.

(f) Noon weather: Enter the observed weather (optional).

(g) Master: Enter master or operator's signature and title.

(h) Codend No.: Enter consecutive numbers for each codend received, beginning with the first codend received in the current calendar year.

(i) Vessel: Enter the name of the U.S. fishing vessel the codend was received from.

(j) Fishing area number: Enter the code number (from Appendix C to this subpart) of the fishing area where the codend was received.

(k) Receipt time: Enter the time based on GMT when the codend was received.

(l) Receipt position: Enter the geographic coordinates (latitude/longitude) where the codend was received.

(m) Codend weight: Enter the estimated total weight of the codends to at least the nearest metric ton round weight.

2. Section Two—Catch (to be completed within 12 hours after the codend was received or within 12 hours after the end of the day, as appropriate):

(a) Species: Enter the species code for each species received which the FFV is authorized to retain, even if the fish are discarded. Use the appropriate species code from Appendix D to this subpart. Use another column for the same species if there is more than one disposition of the receipt (See paragraph (d) below).

(b) Codend No.: Enter the number corresponding with the receipts listed in Section One.

(c) Catch: Enter the receipts in each codend by species, disposition, and receipt, to at least the nearest tenth of a metric ton (0.1 mt) round weight. Disposition is indicated by adding a letter code as described in paragraph (f) below. Enter zero (0) if there was no catch of a listed species.

(d) Daily Disposition: For each species, specify the disposition to at least the nearest 0.1 mt as follows: Enter under "C" the round weight of the fish consumed on board and for fish which are frozen in whole or in part or otherwise processed other than for fishmeal or oil; enter under "M" the round weight of whole fish which are processed for fishmeal or oil; enter under "D" the round weight of fish which are discarded and enter "R" for the round weight of fish returned to the U.S. vessel, if allowed in the fishery. The entries under "C" must be for round weight even though some part of the fish is used for fishmeal or oil.

(e) Area total: Enter the total daily receipts by species in each fishing area in which the fish were caught, to at least the nearest 0.1 mt round weight.

(f) Daily total: Enter the total daily receipts by species, to at least the nearest 0.1 mt round weight.

(g) Cumulative total: Enter the cumulative total receipts by species, to at least the nearest 0.1 mt round weight.

(h) Total catch:

(1) Daily total: Enter the daily total for all species to at least the nearest 0.1 mt round weight for each category of disposition (C, M, D, and R) and each fishing area.

(2) Cumulative total: Enter the cumulative total for all species to at least the nearest 0.1 mt round weight for each category of disposition (C, M, D, and R).

(i) Prohibited species: Enter the species code, the number of individual animals or parts, or the round weight to at least the nearest 0.1 mt of all prohibited species received from each harvesting vessel, as required by the fishery in which the FFV is engaged. Enter the daily and cumulative total for each prohibited species.

(j) Marine mammals: Enter the species code from Appendix D to this subpart, number of animals received (if more than one of the same species and condition), and condition code (1—killed during capture; 2—Injured during capture; 3—Dead before capture (decomposed); and 4—Uninjured) for each incident and harvesting vessel.

3. Section Three—Production (to be completed within 12 hours after the end of the day):

(a) Species: Enter the species code from Appendix D to this subpart for each authorized species which the FFV receives.

(b) Products: Enter the product code from Appendix E to this subpart for each frozen or canned product produced.

(c) PRR %: Enter the daily product recovery rate (PRR) to the nearest percentage (example: 27%) for each type of product per species. This is a ratio expressed as a percentage of the weight of processed product divided by the round weight of fish used to produce that amount of product.

(d) Daily total: Enter the daily total of product produced per species to at least the nearest hundredth of a metric ton (0.01 mt).

(e) Cumulative total: Enter the cumulative total of each product produced per species to at least the nearest hundredth of a metric ton (0.01 mt).

(f) Amount transferred: Enter the cumulative total of each product per species transferred off the vessel either inside or outside of the EEZ (including products delivered to a port by the fishing vessel) to at least the nearest 0.01 mt.

(g) Balance: Enter the cumulative total of each product per species aboard the vessel to at least the nearest 0.01 mt.

(h) Total frozen product: Enter the total for all species to at least the nearest 0.01 mt of the daily total, cumulative total, amount transferred, and quantity remaining onboard.

(i) Meal and Oil:

(1) Daily total: Enter the daily total produced to at least the nearest 0.01 mt.

(2) Cumulative total: Enter the cumulative total produced to at least the nearest 0.01 mt.

(3) Amount transferred: Enter the cumulative total transferred to at least the nearest 0.01 mt.

(4) Balance: Enter the cumulative total aboard the vessel to at least the nearest 0.01 mt.

(j) A daily joint venture log form is illustrated below:

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

DAILY JOINT VENTURE LOG

SECTION ONE - EFFORT

PAGE NO	DATE	VESSEL NAME	IRCS	US PERMIT NUMBER	NOON POSITION		NOON WEATHER	WIND		WEATHER	BAROMETER	SEA CONDITION	AIR WATER TEMPERATURE	MASTER
	Year Month Day				Latitude	Longitude		DIRECTION	FORCE					

CODEND NO	US VESSEL NAME	FISHING AREA NO	RECEIPT TIME (GMT)	RECEIPT POSITION	ESTIMATED RECEIPT WEIGHT

REMARKS

U.S. INSPECTION

OFFICER DATE

REMARKS

Figure 1a to Appendix K: Daily Joint Venture Log.

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

SECTION TWO - CATCH

SPECIES / CODEND No.														
													TOTAL CATCH	
													DAILY TOTAL	CUM TOTAL
DAILY DISPOSITION C														
M														
D														
R														
AREA TOTAL														
DAILY TOTAL														
CUMULATIVE TOTAL														

PROHIBITED SPECIES			

MARINE MAMMALS		
SPECIES CODE	NUMBER	STATUS CODE

Figure 1b. to Appendix K: Daily Joint Venture Log.

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

SECTION THREE - PRODUCTION

	FROZEN PRODUCT																	
SPECIES PRODUCT																		TOTAL FROZEN PRODUCT
PRR'S																		
DAILY TOTAL																		
CUMULATIVE TOTAL																		
AMOUNT TRANSFERRED																		
BALANCE																		

MEAL AND OIL		
	MEAL	OIL
DAILY TOTAL		
CUM TOTAL		
AMOUNT TRANSFFRRED		
BALANCE		

Figure 1c. to Appendix K: Daily Joint Venture Log.

Subpart B—Surpluses

§ 611.20 Total allowable level of foreign fishing (TALFF).

(a) The TALFF, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, is that portion of the optimum yield (OY) of such fishery which will not be caught by vessels of the United States.

(b) Each specification of OY and each assessment of the anticipated U.S. harvest will be reviewed during each fishing season. Adjustments to TALFF's will be made based on updated information relating to status of stocks, estimated and actual performance of domestic and foreign fleets, and other relevant factors.

(c) Specifications of OY and the initial estimates of U.S. harvests and TALFF's at the beginning of the relevant fishing year will be published as a notice in the FEDERAL REGISTER. Adjustments to those numbers will be published as notices in the FEDERAL REGISTER upon occasion or as directed by regulations implementing fishery management plans. For current apportionments, contact the appropriate Regional Director or the Office of Fisheries Conservation and Management, F/CM, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Washington, DC 20235.

[50 FR 35022, Aug. 28, 1985, as amended at 53 FR 24651, June 29, 1988]

§ 611.21 Allocations.

The Secretary of State, in cooperation with the Secretary, determines the allocation among foreign nations of fish species and species groups. The Secretary of State officially notifies each foreign nation of its allocation. The burden of ascertaining and accurately transmitting current allocations and status of harvest of an applicable allocation to fishing vessels is upon the foreign nation and the owner or operator of the FFV.

[50 FR 35022, Aug. 28, 1985]

§ 611.22 Fee schedule for foreign fishing.

(a) *Permit application fees.* Each vessel permit application submitted under § 611.3 must be accompanied by a fee of $354 per vessel, plus the surcharge, if required under paragraph (d) of this section, rounded to the nearest dollar. At the time the application is submitted to the Department of State, a check for the fees, drawn on a U.S. bank, made out to "Department of Commerce, NOAA," must be sent to the Branch Chief, Fees and Permits Branch, F/TS21, National Marine Fisheries Service, Washington, DC 20235. The permit fee payment must be accompanied by a list of the vessels for which the payment is made.

(b) *Poundage fees*—(1) *Rates.* If a nation chooses to accept an allocation, poundage fees must be paid at the rate specified in Table 1, plus the surcharge required by paragraph (d) of this section.

TABLE 1—SPECIES AND POUNDAGE FEES

[Dollars per metric ton, unless otherwise noted]

Species	Poundage fees
Northwest Atlantic Ocean fisheries:	
1. Butterfish	274.61
2. Hake, red	163.97
3. Hake, silver	174.63
4. Herring, river	61.76
5. Mackerel, Atlantic	68.43
6. Other groundfish	119.09
7. Squid, Illex	103.98
8. Squid, Loligo	245.73
Atlantic and Gulf fisheries:	
9. Shark, Atlantic	187.96
10. Shrimp, royal red	(1)
Alaska fisheries:	
11. Pollock, Alaska	95.09
12. Cod, Pacific	143.97
13. Pacific ocean perch	195.96
14. Rockfish, other	326.15
15. Mackerel, Atka	118.64
16. Squid, Pacific	75.10
17. Flounders	83.09
18. Sablefish (Gulf of Alaska)	399.03
19. Sablefish (Bering Sea and Aleutian Islands)	210.18
20. Groundfish, other	106.64
21. Snails	128.42
Pacific fisheries:	
22. Whiting, Pacific	78.21
23. Sablefish	415.47
24. Pacific ocean perch	320.38
25. Rockfish, other	335.93
26. Flounders	316.82
27. Mackerel, jack	254.61
28. Groundfish, other	406.58
Western Pacific fisheries:	
29. Coral [2]	91.54
30. Dolphin fish	2,450.59
31. Wahoo	980.24
32. Sharks	490.12
33. Marlin, striped	823.82
34. Billfish	882.03
35. Swordfish	1,038.45

[1] Reserved.

[2] Dollars per kilogram.

(2) *Method of payment of poundage fees, surcharges and observer fees.* If a nation chooses to accept an allocation, a revolving letter of credit (L/C) must be established and maintained to cover the poundage fees for at least 25 percent of the previous year's total allocations at the rate in paragraph (b)(1) of this section, or as determined by the Assistant Administrator, plus the surcharges and observer fees required by paragraphs (c) and (d) of this section. The L/C must—

(i) Be irrevocable;

(ii) Be with a bank subscribing to ICC Pub. 290;

(iii) Designate "Department of Commerce, NOAA" as beneficiary;

(iv) Allow partial withdrawals; and

(v) Be confirmed by a U.S. bank.

The customer must pay all commissions, Telex, and service charges. No fishing will be allowed until the letter of credit is established, and authorized written notice of its issuance is provided to the Assistant Administrator at the address in paragraph (a) of this section.

(3) *Assessment of poundage fees.* Poundage fees will be assessed quarterly for the actual catch during January through March, April through June, July through September, and October through December. The appropriate Regional Director will reconcile catch figures with each country following the procedures of §611.13(d). When the catch figures are agreed upon, NOAA will present a bill for collection as the documentary demand for payment to the confirming bank. If, after 45 days from the end of the quarter, catches have not been reconciled, the estimate of the Regional Director will stand and a bill will be issued for that amount. If necessary, the catch figures may be refined by the Regional Director during the next 60 days, and any modifications will be reflected in the next quarter's bill.

(c) *Incremental amount.* An additional incremental amount will be added to the poundage fee Bill for Collection for fish harvested by a nation during the first quarter of the next fiscal year following notification under paragraph (10)(C) of section 204(b)(10)(C). This incremental amount will be added to all subsequent quarterly bills until the quarter specified when the Assistant Administrator notifies that nation that it has taken appropriate corrective action. The incremental amount in 1988 will be 42.2 percent of the total poundage fee in each quarter during which this provision applies.

(d) *Surcharges.* The owner or operator of each foreign vessel who accepts and pays permit application or poundage fees under paragraph (a) or (b) of this section must also pay a surcharge. The Assistant Administrator may reduce or waive the surcharge if it is determined that the Fishing Vessel and Gear Damage Compensation Fund is capitalized sufficiently. The Assistant Administrator also may increase the surcharge during the year to a maximum level of 20 percent, if needed, to maintain capitalization of the fund. The Assistant Administrator has waived the surcharge at this time.

(e) *Observer fees.* The Assistant Administrator will notify the owners or operators of FFV's of the estimated annual costs of placing observers aboard their vessels. The owners or operators of any such vessel must provide for repayment of those costs by including one-fourth of the estimated annual observer fee as determined by the Assistant Administrator in a letter of credit as prescribed in § 611.22(b)(2). During the fiscal year, payment will be withdrawn from the letter of credit as required to cover anticipated observer coverage for the upcoming fishery. The Assistant Administrator will reconcile any differences between the estimated cost and actual costs of observer coverage within 90 days after the end of the fiscal year.

(f) *Financial assurances.* A foreign nation, or the owners and operators of certain vessels of that foreign nation, may be required by the Secretary to provide financial assurances. Such assurances may be required if—

(1) Civil and criminal penalties assessed against fishing vessels of the nation have not effectively deterred violations;

(2) Vessels of that nation have engaged in fishing in the EEZ without

proper authorization to conduct such activities;

(3) The nation's vessel owners have refused to answer administrative charges or summons to appear in court; or

(4) Enforcement of Magnuson Act civil or criminal judgments in the courts of a foreign nation is unattainable.

The level of financial assurances will be guided by the level of penalties assessed and costs to the U.S. government.

[50 FR 35022, Aug. 28, 1985, as amended at 51 FR 32091, Sept. 9, 1986; 53 FR 138, Jan. 5, 1988]

Subpart C—Atlantic Ocean

§ 611.50 Northwest Atlantic Ocean fishery.

(a) *Purpose.* This subpart regulates all foreign fishing conducted under a Governing International Fishery Agreement within the EEZ in the Atlantic Ocean north of 35°00′N. latitude, except for the longline fishery which is regulated under § 611.60.

(b) *Authorized fishery*—(1) *Allocations.* Foreign vessels may engage in fishing only in accordance with applicable national allocations.

(2) *Activities allowed.* (i) Vessels subject to this action which fish with trawl gear may fish only within the trawling areas, during the seasons, and with the methods specified in Figure 1 and Table 1 of this section. Vessels subject to this action which fish with any other gear need not comply with the area, season, or method limitations specified in Figure 1 or Table 1 of this section.

(ii) Fishing, including processing, scouting and support of foreign or U.S. vessels is prohibited north and east of a line beginning at the shore at 44°22′ N. latitude, 67°52′ W. longitude and intersecting the boundary of the EEZ at 44°11′12″ N. latitude, 67°16′46″ W. longitude.

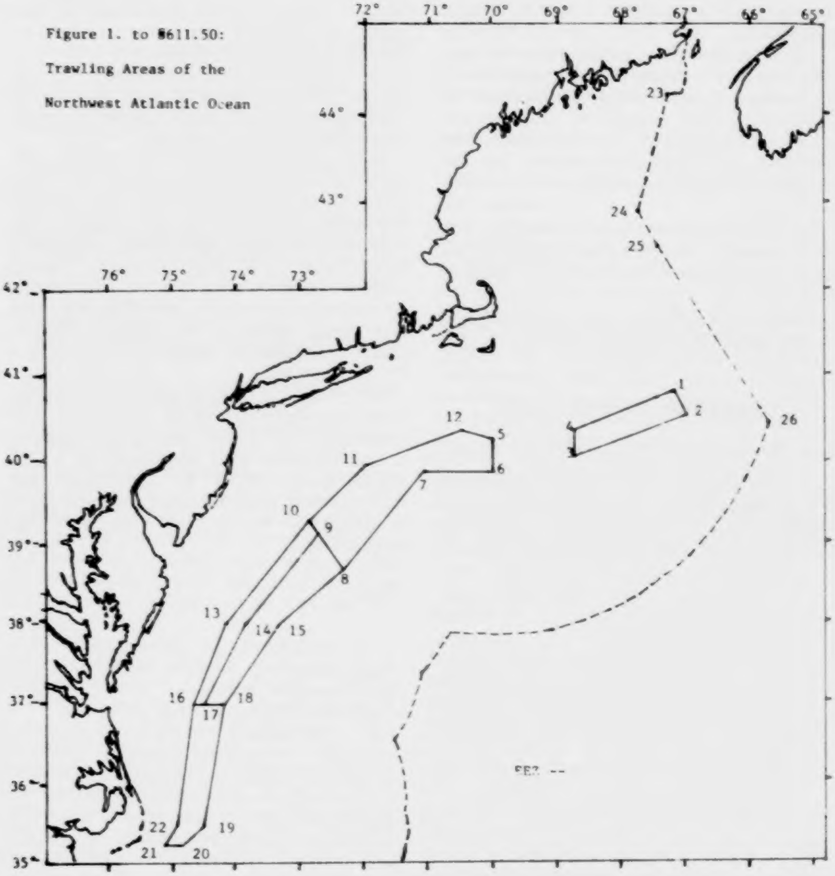


Figure 1. to §611.50: Trawling Areas of the Northwest Atlantic Ocean

72°
71°
70°
69°
68°
67°
66°
65°
44°
43°
42°
41°
40°
39°
38°
37°
36°
35°
76°
75°
74°
73°
1
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EEZ --

1. 40°47′ N., 67°11′ W.
2. 40°30′ N., 67°00′ W.
3. 40°01′ N., 68°45′ W.
4. 40°20′ N., 68°45′ W.
5. 40°13′ N., 70°00′ W.
6. 39°50′ N., 70°00′ W.
7. 39°50′ N., 71°05′ W.
8. 38°40′ N., 72°30′ W.
9. 39°07′ N., 72°44′ W.
10. 39°16′ N., 72°50′ W.
11. 39°56′ N., 72°00′ W.
12. 40°20′ N., 70°30′ W.
13. 38°00′ N., 74°10′ W.
14. 38°00′ N., 73°53′ W.
15. 38°00′ N., 73°20′ W.
16. 37°00′ N., 74°40′ W.
17. 37°00′ N., 74°30′ W.
18. 37°00′ N., 74°10′ W.
19. 35°30′ N., 74°30′ W.
20. 35°13′ N., 74°50′ W.
21. 35°13′ N., 75°06′ W.
22. 35°30′ N., 74°55′ W.
23. 44°11′12″ N., 67°16′46″ W.
24. 42°53′14″ N., 67°44′35″ W.
25. 42°31′08″ N., 67°28′05″ W.
26. 40°27′05″ N., 65°41′59″ W.

(3) *TALFF.* The TALFFs for the Northwest Atlantic Ocean fishery are published in the FEDERAL REGISTER. Current TALFFs are also available from the Regional Director. The procedures for determining and adjusting the squid, mackerel, and butterfish TALFFs are set forth in 50 CFR Part 655.

(4) *Species definitions.* The category "other finfish" used in TALFFs and in allocations includes all species except:

(i) The other allocated species, namely: silver hake, red hake, short-finned squid, long-finned squid, Atlantic mackerel river herring (includes alewife, blueback herring, and hickory shad), and butterfish; and

(ii) The prohibited species, namely: American shad, Atlantic cod, Atlantic herring, Atlantic menhaden, Atlantic redfish, Atlantic salmon, all marlin, all spearfish, sailfish, swordfish, black sea bass, bluefish, croaker, haddock, pollock, scup, sea turtles, sharks (except dogfish), spot, striped bass, tilefish, yellowtail flounder, weakfish, Continental Shelf fishery resources, and other invertebrates (except non-allocated squids).

Table I Fishing gear and season restrictions by fishing area
Northwest Atlantic Ocean Fishery

Off-Bottom Gear Only

Area 1/	January	February	March	April	May	June	July	August	September	October	November	December
1										▨	▨	▨
2	▨	▨	▨			▨	▨	▨	▨ 2/	▨	▨	▨
3	▨	▨	▨							▨	▨	▨
4								▨	▨	▨	▨	▨
5								▨	▨	▨	▨	▨

Bottom Gear and Off Bottom Gear

Area 1/	January	February	March	April	May	June	July	August	September	October	November	December
1												
2												
3												
4	▨	▨	▨									
5	▨	▨	▨									

Unless otherwise noted, seasons open at 0001 hours local time on the first day of the month and terminate at 2400 hours local time on the last day of the month

1/ Coordinates of the various areas are set forth in Figure 1 of this section

2/ Season begins at 0001 hours local time on June 15, and terminates at 2400 hours local time on September 15

▨ Denotes maximum open fishing season, subject to possible earlier closure for some of all nations in accordance with § 611.13

(5) *Closures.* The taking of any species for which a nation has an allocation is permitted, provided that:

(i) The vessels of the foreign nation have not caught the allocation of that nation for any species or species group (e.g., "other finfish"). When vessels of a foreign nation have caught an applicable allocation of any species, all further fishing other than scouting, processing, or support by vessels of that nation must cease, even if other allocations have not been reached. Therefore, it is essential that foreign nations plan their fishing strategy to ensure that the reaching of an allocation for one species does not result in the premature closing of a nation's fishery for other allocated species.

(ii) The fishery has not been closed for other reasons under § 611.13.

(6) *Allocation utilization.* Foreign fishing vessels may elect to retain or discard allocated species; however, the computation of allocation utilization and fee refunds will be based on the total quantity of that species which was caught. Prohibited species must always be returned to the sea as required under § 611.11.

(7) *Additional authorization.* For the purpose of gathering additional management information, the Regional Director may authorize limited foreign fishing in areas, during seasons, and using gear not otherwise authorized in this subpart. Special reporting requirements for such fishing may be specified by the Regional Director.

(c) *Gear restrictions.* (1) No foreign fishing vessel may use on the bottom a trawl net having, in any part of the net, meshes of less than 60 millimeters (inside measure when wet after use).

(2) No foreign fishing vessel may use any trawl net having, in any part of the net, meshes of less than 45 millimeters (inside measure when wet after use).

(3) Meshes are to be measured by a flat, wedge-shaped gauge having a taper of 2 centimeters in 8 centimeters and a thickness of 2.3 millimeters, inserted into meshes under a pressure or pull of 5 kilograms. The mesh size of a net shall be taken to be the average of the measurements of any series of twenty consecutive meshes, at least ten meshes from the lacings, and, when measured in the codend of the net, beginning at the after end and running parallel to the long axis.

(4) No foreign fishing vessel may use any device or method which would have the effect of reducing mesh size, except that:

(i) Chafing gear may be attached to the underside of the codend of bottom trawl nets. Chafing gear may not be attached to trawl nets having a mesh size of less than 60 millimeters.

(ii) Net strengtheners may be attached to the codend of trawl nets providing such net strengtheners consist of mesh material identical or similar to the material of the codend and have a mesh size of at least twice the minimum authorized mesh size.

(5) To qualify as off-bottom gear, a trawl net must:

(i) Be a truly pelagic trawl net, operated with neither the doors nor the net mouth in contact with the bottom; or

(ii) Be rigged so that the net mouth operates not less than 60 centimeters above the bottom. An otherwise standard bottom trawl net will be considered to meet this requirement if:

(A) It has attached perpendicular to the net mouth "hanging line" chains not shorter than 60 centimeters;

(B) Each chain hangs loose or is attached to steel bobbins; and

(C) No weights or other attachments are directly secured to the "hanging line" other than the chains specified in paragraph (c)(5)(ii)(A) of this section, or flotation devices.

(d) *Fixed gear avoidance.* (1) No foreign fishing vessel may trawl in any fixed-gear area broadcast by the Coast Guard (see § 611.12 and paragraph (d)(2) of this section). Broadcasts of fixed-gear areas will include a buffer zone around the actual reported locations of the fixed gear.

(2) The locations (latitude and longitude) of fixed-gear areas are broadcast at 1350 G.m.t. on the first day of each month by Coast Guard Communications Station Boston (NMF) on 472 kHz radiotelegraphy. Broadcast is made on 8502 kHz via simultaneous keying. The list of areas is updated each day at 1350 G.m.t. All broadcasts are numbered sequentially by month, day and year. A printed monthly sum-

mary of fixed-gear information is available from commander (Aol), Coast Guard Atlantic Area, Governors Island, New York, N.Y. 10004 (Telephone 212-668-7877), Telex 126831.

(e) *Collection, maintenance, and reporting of data.* In addition to the requirements of §§ 611.4 and 611.9, each foreign nation or foreign fishing vessel shall collect, maintain or report on a timely basis accurate data relating to fishing operations as specified below. The following logs or reports are required:

(1) *Fishing log.* The operator of each FFV which engages in fishing must maintain a record of all catches of allocated, authorized, or prohibited species to the nearest tenth of a metric ton (0.1 mt).

(2) *Quarterly scientific report.* (i) Each foreign nation whose vessels engage in fishing in the Northwest Atlantic Ocean Fishery shall submit not later than three months after the close of each quarter a quarterly scientific report (QSR) of the catch and effort of each such vessel to:

Director, Northeast Fisheries Center, National Marine Fisheries Service, Woods Hole, Massachusetts 02543.

Quarterly scientific reports shall be submitted for each vessel for each 30 minute latitude by 30 minute longitude area in which the vessel engaged in fishing, and for each gear type used by the vessel in a given 30 minute latitude by 30 minute longitude area, by semimonthly periods. Effort data must be submitted whether or not any catch was taken. The catch of each species taken, even, if discarded, must be shown in tenths of a metric ton (0.1 m.t.) (live round weight).

(ii) Quarterly scientific reports should be completed in accordance with the instructions in Appendix I and may be submitted in the format shown in Figure 1 to Appendix I or by magnetic tape, computer cards, or printouts. Data may also be reported using the 1977 version of the STATLANT 21-B form and the procedures established for that form.

Figure 1

QSR-1

Year/Quarter	Vessel Name	Permit Number	Vessel Size Code
Area Designation	Fishing Gear	Target Species/Codes	Page ___ of ___

EFFORT DATA

Semimonthly Period						
Effort by Standard Units						
Days on Grounds						
Days Fished						
Hours Fished						

CATCH DATA (live round weight in hundredths of a metric ton (0.01 m.t.))

Species Name	Species Code							Total by Species
Total by Semimonthly Period								Grand Total

A. *Report form entries.* See Figure 1 for report form.

1. Year/Quarter: Enter the year and quarter for which the report is prepared. For example: 1979/2 designates April, May, and June of 1979.

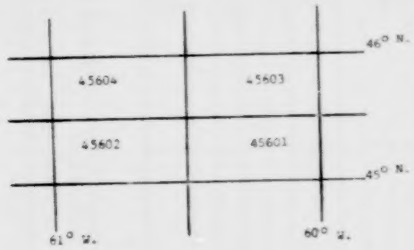
2. Vessel name: Enter the vessel name as shown on the vessel's permit.

3. Permit number: Enter the current permit number without hyphens.

4. Vessel size code: Enter the code number which indicates the vessel's tonnage (GRT) from the following list:

Tonnage (GRT)	Code number
0 to 24.9	1
25 to 49.9	2
50 to 149.9	3
150 to 499.9	4
500 to 999.9	5
1000 to 1999.9	6
2000 and over	7

5. Area designation: Enter the five digit code which indicates the latitude, longitude and quadrant of the 30 minute latitude by 30 minute longitude area for which the report is submitted. The first two digits of the code are determined from the latitude in degrees (disregarding minutes); the second two digits are determined by the longitude in degrees (disregarding minutes); and the fifth digit is determined from the quadrant within the one degree latitude by one degree longitude area as follows: southeast-1, southwest-2, northeast-3, and northwest-4. For example, the 30 minute latitude by 30 minute longitude areas 45601, 45602, 45603, and 45604 are shown in the following diagram:



A separate report is required for each area designation in which each vessel fishes.

6. Fishing gear: Enter the standard abbreviations from the following list for the fishing gear used in the area designated in item 5. A separate report is required for each fishing gear used in the area.

Gear category	Standard abbreviation
Bottom otter trawl (side)	OTB-1
Bottom otter trawl (stern)	OTB-2
Off-bottom otter trawl (see § 611.50(c)(5) for definition of this gear)	OTB-3
Midwater otter trawl (side)	OTM-1
Midwater otter trawl (stern)	OTM-2
Bottom pair trawl	PTB
Midwater pair trawl	PTM
Purse seine	PS
Gillnets (set)	GNS
Gillnets (drift)	GND
Gillnets (fixed)	GNF
Longlines (set)	LLS
Longlines (drift)	LLD
Traps	FIX
Miscellaneous gears (other than above)	MLS

7. Target species/codes: Enter the common names and species codes (as listed in Appendix D to Subpart A) of the main species sought in the area designated during the period of the report.

8. Page numbering: Sequentially number each page and the total number of pages in the submission for each vessel. For example, if a stern trawler fished during the period of the report by bottom trawl in three different 30 minute latitude by 30 minute longitude areas and by off-bottom trawl in two of those same areas, the pages of that vessel's report would be numbered "page 1 of 5" through "page 5 of 5".

9. Semimonthly periods: Enter the designation for each semimonthly period of the quarter during which fishing effort was expended in the area designated and using the gear indicated. The designation is a three digit number consisting of the numerical equivalent of the month (01 for January through 12 for December) followed by the numeral 1 for days 1-15 of each month or the number 2 for days 16 through the end of the month. Thus, the semimonthly period June 16-30 would be designated 062 and the semimonthly period July 1-15 would be designated 071.

10. Effort by standard units: Whenever possible, enter the effort expended during each semimonthly period in the standard units shown below for the fishing gear indicated on the report.

Fishing gear	Standard effort units	Computation
Purse seines	No. of sets	Number of times the gear has been set or shot, whether or not a catch was made.
Trawls	No. of hours fished	Number of hours during which the trawl was in the water fishing.
Gillnets (set or drift)	No. of 100 meter net sets	Length of nets in meters divided by 100 multiplied by the number of sets made.
Gillnets (fixed)	No. of 100 meter net clearings	Length of nets in meters divided by 100 multiplied by the number of times the net was cleared.
Traps	Pot-days	Number of days pots are in the water and fishing multiplied by the number of pots hauled.

Fishing gear	Standard effort units	Computation
Longlines (set or drift)	Hook-days per thousand hooks.	Number of hooks fished divided by 1000 multiplied by number of days fished.

11. Days on grounds: Enter the number of days the vessel was on the fishing grounds. Any portion of a day on the grounds shall be counted as one day on the grounds.

12. Days fished: Enter the number of days the vessel fished. Any portion of a day fished shall be counted as one day fished.

13. Hours fished: Enter the number of hours fished to the nearest hour.

14. Species name: Enter the common names of each species caught in the area designated during the period of the report by the gear indicated. Attach additional sheets as necessary to include all species caught.

15. Species code: Enter the species code (as listed in Appendix I to § 611.9) corresponding to each species named.

16. Catch data: For each species, enter the live round weight to the nearest hundredth of a metric ton (0.01 m.t.) of fish cought, by semimonthly period. For quantities which are not retained, add the suffix "D" (for discarded) following the specific semimonthly catch figure for such discarded quantities.

17. Total during the semimonthly period: Enter the total of all species caught in the area and by the gear indicated during the semimonthly period.

18. Total by species: Enter the total for each species caught in the area and by the gear indicated.

19. Grand total: Enter the total fish caught in the area and by the gear indicated during the period of the report.

B. *Submission instructions.* Submission of the QSR by magnetic tape, computer cards, or printouts will be accepted in lieu of the report form shown in Figure 1. Data may also be reported using the 1977 version of the STATLANT 21-B form and the procedures established for that form. Questions regarding submission should be directed to:

Director, Northeast Fisheries Center, National Marine Fisheries Service, Woods Hole, Massachusetts 02543.

[43 FR 59293, Dec. 19, 1978, as amended at 44 FR 15727, Mar. 15, 1979; 44 FR 17184, Mar. 21, 1979; 44 FR 46286, Aug. 2, 1979; 45 FR 14046, Mar. 4, 1980; 47 FR 37555, Aug 26, 1982; 48 FR 14556, Apr. 4, 1983; 48 FR 16891, Apr. 20, 1983; 48 FR 34762, Aug. 1, 1983; 49 FR 43679, Oct. 31, 1984; 50 FR 35023-35026, Aug. 28, 1985; 53 FR 24652, June 29, 1988]

§ 611.51 Hake fishery.

(a) *Definitions.* For purposes of this section (1) JVP means the estimated U.S. harvest of hakes in excess of the amount which can and will be utilized by U.S. fish processors; JVP may be available for transfer to foreign-flag processing vessels; and (2) DAP means the part of the estimated U.S. harvest of hake which can and will be utilized by U.S. fish processors.

(b) *Procedures to reassess DAP*—(1) *Preliminary reassessment.* (i) If a foreign fishing permit application is received for a joint venture and if the amount of U.S.-harvested hake requested by the applicant exceeds the amount of JVP that can be made available to the applicant, the Secretary will reassess DAP for hake to determine whether additional JVP may be made available.

(ii) The Secretary will consult with the New England and Mid-Atlantic Fishery Management Councils and consider the following factors in making the reassessment:

(A) U.S. catch and participation in the fishery to date;

(B) Projected U.S. catch and participation in the fishery for the remainder of the fishery year;

(C) U.S. processing performance to date; and

(D) Projected U.S. processing performance for the remainder of the fishing year.

(iii) The preliminary reassessment will be published in the FEDERAL REGISTER and a public comment period of 15 days will be provided.

(2) *Final reassessment.* The Secretary will make a final reassessment of DAP after taking into consideration all information received under paragraph (b)(1)(ii) of this section, and any additional relevent information that may become available. The final reassessment will be published in the FEDERAL REGISTER with the reasons for the determination.

(3) *Availability of data.* All data relevent to the reassessment will be available in aggregate form for public review at the Regional Director's

office during the public comment period.

[49 FR 4213, Feb. 3, 1984]

Subpart D—Atlantic, Caribbean, and Gulf of Mexico

§ 611.60 General provisions.

(a) *Purpose and scope.* This subpart regulates:

(1) All foreign longline fishing conducted under a GIFA which involves catching, processing, or receipt of billfishes, sharks, or other fishes in the EEZ in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea; and

(2) All other foreign fishing conducted under a GIFA within the EEZ south of 35°00′ N. latitude in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea.

(3) Regulations governing fishing for swordfish in the same geographical area by vessels of the United States are published as Part 630 of this chapter.

(4) The term *billfish* or *billfishes* as used in this subpart means all species of marlin, spearfish, sailfish and swordfish.

(b) *Authorized fishery.* (1) *Allocations.* Foreign vessels may engage in fishing only in accordance with applicable national allocations.

(2) *TALFF.* The TALFFs are published in the FEDERAL REGISTER. Current TALFFs are also available from the Regional Director.

(3) *Permitted fishing.* Foreign fishing authorized under this subpart may be conducted only during the seasons, in the open areas, and with the gear specified in §§ 611.61 and 611.62.

(c) *Prohibited species.* (1) All species of fish over which the United States exercises exclusive fishery management authority and for which there is no applicable allocation are prohibited species and shall be treated in accordance with § 611.11. Fish caught in excess of an applicable national allocation are prohibited species.

(2) As a means of rebutting the presumption of § 611.11(d), a vessel may store all prohibited species caught outside the EEZ in a separate part of the hold that can be sealed, and may have its holds inspected and sealed before commencing fishing in the EEZ. Seals affixed during such inspection shall be maintained in an unbroken condition during the time the fishing vessel is in the EEZ. Such inspections may be obtained at Venice or New Orleans, La., Key West, Fla., Mayaguez, P.R., or Norfolk, Va., upon 48 hours advance notification to: Regional Director, Southeast Region, National Marine Fisheries Service, Duval Building, 9450 Koger Boulevard, St. Petersburg, Fla. 33702 Telephone: 813-893-3141.

(3) Additional ports for hold inspection may be arranged with the Regional Director.

(4) The designation of ports for hold inspections does not modify the port entry arrangements or requirements (if any) of GIFAs or the notification requirements of any other laws or regulations of the United States.

(d) *Open area.* Except for the closed areas set forth in paragraph (e) of this section, § 611.61(b) and § 611.62(b), foreign fishing authorized under this subpart may be conducted in that portion of the EEZ in the Atlantic Ocean, Gulf of Mexico and Caribbean Sea beyond 12 nautical miles from the baseline used to measure the U.S. territorial sea, and that portion of the EEZ south and west of a line connecting the shore at 44°22′ N. latitude, 67°52′ W. longitude and the outer boundary of the EEZ at 44°11′12″ N. latitude, 67°16′46″ W. longitude.

(e) *Closed area.* The area known as East and West Flower Garden Banks is closed to foreign fishing. The Flower Garden Banks are located in the Gulf of Mexico approximately 110 nautical miles southeast of Galveston, Texas, and 120 nautical miles south of Cameron, Louisiana. The area encloses a proposed national marine sanctuary, which consists of approximately 257 square nautical miles and comprises the waters overlaying and surrounding those banks to a distance of 4 nautical miles from the 100 meter isobath of each bank. The boundary of the closed area is described by rhumb lines connecting the following points:

Point	Latitude	Longitude
1	27°46.5′N	93°57.0′W
2	27°56.0′N	93°57.0′W

Point	Latitude	Longitude
3	28°04.0'N	93°32.0'W.
4	27°51.0'N	93°28.0'W.
5	27°47.0'N	93°45.5'W.
6	27°46.5'N	93°57.0'W.

[46 FR 27493, May 20, 1981, as amended at 47 FR 44265, Oct. 7, 1982; 48 FR 1507, Jan. 13, 1983; 49 FR 43679, Oct. 31, 1984, 50 FR 33956, Aug. 22, 1985; 50 FR 35025, 35026, Aug. 28, 1985]

§ 611.61 Atlantic billfish and sharks fishery.

(a) *Purpose.* This section regulates all foreign fishing conducted under a GIFA which involves the catching of any species of billfish or sharks in the EEZ in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea.

(b) *Area and seasons.* (1) Except as provided in paragraph (b)(2) of this section, foreign fishing under this section may be conducted throughout the year. Retention of sharks will terminate when the applicable national allocation has been reached. The closure provisions of § 611.13(a)(1) through (a)(3) do not apply to this section.

(2) From June 1 through November 30 foreign vessels fishing under this section for species other than sharks, and longline gear deployed from such vessels, are prohibited in the area defined by the following coordinates in the order listed:

Coordinate	Latitude	Longitude
1	Shore at 44°22'00" N	67°52'00" W.
2	44°11'12" N	67°16'46" W.
3	42°53'14" N	67°44'35" W.
4	42°31'08" N	67°28'05" W.
5	40°55'00" N	66°09'00" W.
6	40°25'00" N	66°57'00" W.
7	40°00'00" N	67°39'30" W.
8	39°32'00" N	70°52'30" W.
9	37°54'00" N	73°05'00" W.
10	34°50'00" N	73°34'00" W.
11	34°50'00" N	shore.

(3) *Gulf of Mexico.* [Reserved]

(4) [Reserved]

(c) *Prohibited species.* Unless otherwise specifically instructed by a U.S. observer or Authorized Officer, and instead of following the procedures of § 611.11(b):

(1) No species may be released below the surface of the water;

(2) All prohibited species must be released regardless of the condition of the fish; and

(3) All billfishes and all prohibited sharks must be released at the surface of the water by cutting the line without removing the fish from the water.

(d) *Gear restrictions.* Foreign vessels participating in a directed fishery for sharks must use a minimum sized hook of 7 inches shank length and 2.5 inches gap (distance between tip and shank) when fishing inside the 100-fathom depth contour. There is no hook size restriction seaward of the 100-fathom depth contour.

(e) *Statistical reporting.* (1) In addition to the requirements of §§ 611.4 and 611.9, a vessel of a nation with an applicable allocation shall submit the following additional quarterly reports:

(i) Catch and effort data, summarized weekly by one degree squares, containing the following information:

(A) Number of hooks set.

(B) Number of sharks caught under allocation.

(C) Number of prohibited species (by species code from Appendix D to Subpart A) caught and released.

(D) Number of prohibited species (by species code) released alive.

(ii) Summary of vessel activities containing the following information:

(A) Permit number of each vessel fishing.

(B) For each successive day of the reporting period, the noon-day location (within 0.1 degree of latitude and longitude) of each vessel in the fishery.

(2) A vessel of a nation with no applicable allocation is exempt from the requirements of § 611.9(d) and § 611.4(f)(2), but shall provide the reports required by § 611.4 (f)(3) and (f)(4), when applicable. In addition, a vessel of a nation with no applicable allocation shall submit the quarterly reports described in paragraphs (e)(1)(i) (A), (C), and (D), only, and paragraph (e)(1)(ii) of this section.

(3) The quarterly reports required by paragraphs (e)(1) and (2) of this section shall be submitted not later than 60 days from the end of the quarter for which the report is being made, to: Director, Southeast Fisheries Center, National Marine Fisheries

Service, 75 Virginia Beach Drive, Miami, Florida 33149. Telephone: 305-361-5761.

(f) *Fixed gear avoidance.* (1) No foreign fishing vessel subject to this section may conduct longline fishing in any fixed-gear area broadcast by the Coast Guard (see § 611.12 and paragraph (f)(2) of this section). Broadcasts of fixed-gear areas will include a buffer zone around the actual reported locations of the fixed gear.

(2) The locations (latitude and longitude) of fixed-gear areas north of Cape Hatteras are broadcast at 1350 G.m.t. on the first day of each month by Coast Guard Communication Station Boston (NMF) on 472 kHz radiotelegraphy. The list of areas is updated each day at 1350 G.m.t. All broadcasts are numbered sequentially by month, day, and year. A printed monthly summary of fixed-gear information is available from:

Commander (Aol), Coast Guard Atlantic Area, Governors Island, New York, NY 10004. Telephone 212-668-7877; Telex 126831.

[46 FR 27493, May 20, 1981, as amended at 47 FR 40441, Sept. 14, 1982; 48 FR 1507, Jan. 13, 1983; 48 FR 34762, Aug. 1, 1983; 48 FR 39077, Aug. 29, 1983; 49 FR 43679, Oct. 31, 1984; 50 FR 33956, Aug. 22, 1985; 50 FR 35025, 35026, Aug. 28, 1985; 51 FR 20300, June 4, 1986; 52 FR 36578, Sept. 30, 1987]

§ 611.62 Royal red shrimp fishery.

(a) *Purpose.* This section regulates all foreign fishing conducted under a GIFA which involves the catching of royal red shrimp in the EEZ of the Gulf of Mexico.

(b) *Closed areas.* Fishing by foreign vessels for royal red shrimp is prohibited in depths less than 100 fathoms.

(c) *Gear restrictions.* No foreign vessel may use gear other than trawl gear to fish for royal red shrimp, except as specifically authorized in writing by the Regional Director.

[46 FR 27493, May 20, 1981]

Subpart E—Northeast Pacific Ocean

§ 611.70 Pacific coast groundfish fishery.

(a) *Purpose.* This subpart regulates all foreign fishing for groundfish conducted under a Governing International Fishery Agreement within the EEZ seaward of the States of Washington, Oregon, and California. For regulations governing fishing for groundfish in the same area by vessels of the United States, see Part 663 of this chapter.

(b) *Definitions.* For purposes of this section, the following terms are defined:

(1) *Directed fishing* means any fishing by the vessels of a foreign nation for allocations of fish granted that nation under § 611.21.

(2) *Factory weight* means the product weight converted to round weight.

(3) *Foreign fishing vessel (FFV)* means any fishing vessel other than a vessel of the United States, except those foreign vessels engaged in recreational fishing, as defined in § 611.2.

(4) *Incidental species* means groundfish species which are unavoidably caught while fishing for allocated or authorized species.

(5) *Joint venture* means any operation by a foreign vessel assisting fishing by U.S. fishing vessels, including catching, scouting, processing and/or support. (A joint venture generally entails a foreign vessel processing fish received from U.S. fishing vessels and conducting associated support activities.)

(6) *Processing* means any operation by an FFV to receive fish from foreign or U.S. fishing vessels and/or the preparation of fish, including but not limited to cleaning, cooking, canning, smoking, salting, drying or freezing, either on the FFV's behalf or to assist other foreign or U.S. fishing vessels.

(7) *Product weight* means the weight of the fish after processing and is explained further at § 611.9(j)(2).

(8) *Prohibited species,* with respect to any vessel, means salmonids, Pacific halibut, Dungeness crab, and any species of fish which that vessel is not specifically allocated or authorized to retain, including fish caught or received in excess of any allocation or authorization.

(9) *Regional Director* means the Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115 or a designee.

(10) *Round weight* means the weight of the whole fish before processing.

(11) *Secretary* means the Secretary of Commerce or a designee.

(12) *Target fishing* means fishing for the primary purpose of catching a particular species (the target species). The only legal target species are those specifically allocated under § 611.21 for the directed fishery or authorized for joint venture receipt under a foreign fishing permit.

(c) *Authorized foreign fishing*—(1) *Amounts.* The total allowable levels of foreign fishing (TALFF), joint venture processing (JVP), incidental catch and retention allowance percentages, amounts of fish set aside as reserves, and the estimated domestic annual harvest (DAH) and domestic annual processing (DAP) are published in the Federal Register prior to the beginning of each fishing season, and during the season if these amounts are modified, to reflect changes in resource condition and performance of the U.S. industry. Current TALFF and JVP amounts are available from the Regional Director.

(2) *Restriction on joint venture incidental retention allowance.* The incidental retention allowance percentages are published in the Federal Register to reflect changes in resource condition and performance of the U.S. industry. The allowance percentages apply to each 5000 metric tons (mt) of species with a JVP allowance received by vessels of a foreign nation from U.S. vessels. If the retained amount of an incidental species or species complex reaches the specified percentage, no further amount of that species or species complex may be retained until vessels of that nation have received a full 5,000 mt of the species with a JVP allowance.

(d) *Modifications to authorized foreign fishing*—(1) *Modifications.* The Secretary may establish or modify amounts of TALFF, JVP, and corresponding incidental catch and retention allowances during the season by publishing a notice in the Federal Register in accordance with this paragraph (d). The Secretary may publish season and area restrictions for any directed fishery for species other than Pacific whiting under the procedures of this paragraph (d).

(i) TALFF may be increased by any part of the reserve and initial estimated DAH for the species under consideration that the Secretary determines will not be harvested by U.S. fishermen during the remainder of the calendar year.

(ii) JVP may be increased by the amount of DAH for the species under consideration that the Secretary determines will not be processed by U.S. processors during the remainder of the fishing year.

(2) *Procedures to reassess DAH and DAP*—(i) *Preliminary reassessment.* On July 1, or as soon as practicable thereafter, the Secretary will reassess DAH and DAP for each species for which a numerical OY exists. The Secretary will consult with the Pacific Fishery Management Council and will consider the following factors in making the reassessments:

(A) U.S. catch and effort as of July 1;

(B) Projected U.S. catch and effort for the remainder of the fishing year;

(C) U.S. processing performance as of July 1; and

(D) Projected U.S. processing performance for the remainder of the fishing year.

The preliminary reassessments will be published in the Federal Register on or about July 1.

(ii) *Final reassessment.* On August 1, or as soon as practicable thereafter, the Secretary will make a final reassessment of DAH and DAP for each species for which a numerical OY exists. The Secretary will consult with the Pacific Fishery Management Council and take into consideration all information received under paragraph (d)(2)(iv) of this section, all factors considered in making the preliminary reassessments under paragraph (d)(2)(i) of this section, and any additional relevant information. The final reassessment will be published in the Federal Register on or about August 1 with the reasons for the determinations.

(iii) *Availability of data.* All data relevant to the preliminary and final reassessments under paragraphs (d)(2)(i) and (d)(2)(ii) of this section will be available in aggregate form for public review at the Regional Director's office during the public comment period.

(iv) *Public comment.* Comments from the public that are relevant to preliminary and final reassessments in paragraphs (d)(2)(i) and (d)(2)(ii) of this section should be submitted to the Regional Director before August 1 or as stated in the FEDERAL REGISTER notice.

(3) *Procedures for other modifications*—(i) *Proposed modifications.* At any time during the calendar year, the Secretary may propose to modify the incidental catch or retention allowance percentages for any groundfish species or species complex. At any time the Secretary may propose to establish or modify seasons or areas for directed fisheries for species other than Pacific whiting. The Secretary will consult with the Pacific Fishery Management Council and will consider the following factors:

(A) Observed rates of incidental catches in previous foreign directed fishery or joint venture operations;

(B) Current estimates of the relative abundance and availability of species caught or received incidentally;

(C) Ability of the foreign fishery to attain TALFF or JVP;

(D) Past and projected foreign and U.S. fishing efforts;

(E) Status of the stock;

(F) Impact on domestic industry; and

(G) Other relevant scientific information.

Any proposed modification will be published in the FEDERAL REGISTER.

(ii) *Final modification.* Within thirty days following the publication of a proposal under paragraph (d)(3) of this section, or as soon as practicable thereafter, the Secretary may make a final decision. The Secretary will consult with the Pacific Fishery Management Council and take into consideration all information received under paragraph (d)(3)(iv) of this section, all factors considered in making the proposal under paragraph (d)(3)(i) of this section, and any additional relevant information. Any final decision will be published in the FEDERAL REGISTER with the reasons for the modification.

(iii) *Availability of data.* Data relevant to the proposed and final decisions under paragraphs (d)(3)(i) and (d)(3)(ii) of this section will be available in aggregate form for public review at the Regional Director's office during the public comment period.

(iv) *Public comment.* Comments from the public that are relevant to proposed and final decisions in paragraphs (d)(3)(i) and (d)(3)(ii) of this section should be submitted to the Regional Director by the date specified in the relevant FEDERAL REGISTER notice.

(e) *Fishery closures*—(1) *General.* The catching, retention, or receipt of any species or species complex is prohibited after the applicable open season has ended or after the fishery has been closed under a regulation or notice of closure issued under this section or Part 663 (Regulations for the domestic Pacific Coast Groundfish Fishery).

(2) *Directed fishery.* Catching and retaining any species or species complex is prohibited after the vessels of a foreign nation have caught:

(i) That nation's allocation of TALFF; or

(ii) The maximum incidental catch allowance for that nation of any species or species complex.

(3) *Joint venture fishery.* (i) The receipt of any species of U.S.-harvested fish is prohibited after the maximum JVP amount has been received.

(ii) The retention of a species or species complex of U.S.-harvested fish having an incidental retention allowance is prohibited after the maximum incidental retention allowance for that species or species complex has been retained.

(f) *Seasons*—(1) *Directed fishery.* Directed foreign fishing authorized under this subpart may begin at 0701 G.M.T. (0001 Pacific Daylight Time) June 1 and will end not later than 0800 GMT on November 1 (2400 Pacific Standard Time on October 31), unless a different period of time is specified in a foreign fishing permit.

(2) *Joint venture fishery.* There is no season restriction unless specified in a

foreign fishing permit or under § 611.70(d).

(g) *Closed areas*—(1) *Directed fishery.* No directed foreign fishing may be conducted:

(i) Shoreward of a line drawn twelve nautical miles from the baseline used to measure the U.S. territorial sea;

(ii) North of 47°30′ N. latitude;

(iii) South of 39°00′ N. latitude;

(iv) Within the "Columbia River Recreational Fishery Sanctuary"—that area between 46°00′ N. latitude and 47°00′ N. latitude and east of a line connecting the following coordinates in the order listed: 46°00′ N. latitude, 124°55′ W. longitude; 46°20′ N. latitude, 124°40′ W. longitude; and 47°00′ N. latitude, 125°20′ W. longitude; or

(v) Within the "Klamath River Pot Sanctuary"—that area between 41°20′ N. latitude and 41°37′ N. latitude and east of a line connecting the following coordinates in the order listed: 41°20′ N. latitude, 124°32′ W. longitude; and 41°37′ N. latitude, 124°34′ W. longitude.

(2) *Joint venture fishery.* Except as specified under § 663.24 or § 611.70(d), no U.S.-harvested fish may be received or processed south of 39°00′ N. latitude.

(h) *Gear restrictions—directed fishery.* (1) Except as authorized under paragraph (h)(2) of this section, gear other than a pelagic trawl with a minimum stretched mesh size of 100 mm, measured between the inside of one knot and the inside of the opposing knot when wet, is prohibited. Liners must not be used in the codend of the trawl. Devices or methods of gear use which have the effect of reducing the mesh size in the codend are prohibited. Fishing on the seabed is prohibited.

(2) Any outer protective mesh covering (outer bag or chafing gear) of a mesh size less than two times the mesh size of the inner codend is prohibited. Any outer protective mesh covering which is not aligned knot-to-knot to the inner net and tied to the straps and riblines is prohibited. Such outer mesh must not be connected directly to the terminal (closed) end of the codend. Thread size of an outer protective mesh covering must not be greater than four times the diameter of the thread size of the inner net.

(i) *Target fishing—directed fisheries.* (1) It is unlawful for any operator or owner of a foreign fishing vessel to conduct target fishing for any species or species complex for which that nation does not have an allocation of TALFF.

(2) It is a rebuttable presumption that any trawl that contains more than 50 percent by weight of any species or species complex (such as "other species") was conducted for the purpose of catching that species or species complex and therefore constitutes target fishing for that species or species complex.

(j) *Reports and recordkeeping*—(1) *Weekly reports.* The requirements at § 611.4(f) are modified as follows:

(i) Catch estimates. In the weekly catch report (CATREP) and weekly receipts report (RECREP), catches of salmonids, Pacific halibut, and Dungeness crab must be recorded in numbers of individuals.

(ii) Weekly receipts report.

(A) In addition to the requirements at §§ 611.4(f)(3) and 611.70(j)(1)(i), the weekly receipts reports (RECREP) must contain amounts of fish that are discarded or retained by an FFV operating in a joint venture off Washington, Oregon, and California, for each species and fishing area, to the nearest tenth of a metric ton (0.1 mt) round weight (except for salmonids, Pacific halibut and Dungeness crab which are recorded in numbers of individuals), and must be followed either by the letter "D" (for discarded) and the confirmation code, or by the letter "K" (for retained or kept) and the confirmation code.

(B) For the purposes of this § 611.70, the product disposition code "P" (referenced in Appendix G to Subpart A) must *not* be used in the RECREP. The only disposition codes required in this report are "D" (for discarded), "K" (for retained), if specifically authorized in the vessel permit conditions and restrictions, and "R" (for fish that are returned to a U.S. vessel).

(iii) Any weekly catch report (CATREP) submitted under § 611.4(f)(2) or weekly receipts report (RECREP) submitted under § 611.4(f)(3) must state if it pertains to target species other than Pacific whiting by following the word "CATREP" or "RECREP" with the name of the target species. If more than one target fishery is conducted in the same week, a separate CATREP or RECREP must be submitted for each fishery.

(2) *Daily reports.* From the time the Secretary estimates that 90 percent of JVP, an incidental retention allowance, a nation's fishing allocation, or incidental catch allowance of any species or species complex has been reached, and so notifies the designated representative of the nation(s) involved, the weekly catch report (CATREP) and the weekly receipts report (RECREP) must be submitted on a daily basis and must reach the Regional Director no later than three days after the reported fishing day.

(3) *Annual report.* Each nation with fishing vessels conducting directed fishery operations must report annual catch and effort statistics by May 31 of the following year in tabular form as follows:

(i) Effort in hours trawled, by vessel class, by gear type, by months, by ½° latitude by 1° longitude statistical areas.

(ii) Catch by vessel class, by gear type, by month, by ½° latitude by 1° longitude statistical areas:

(A) To the nearest tenth of a metric ton (0.1 mt round weight), any species for which that nation has a fishing allocation or incidental catch allowance; and

(B) The numbers of salmonids, Pacific halibut, and Dungeness crab.

(4) *Logs.* (i) The owner and operator of each foreign fishing vessel must maintain logs in accordance with the requirements of § 611.9 as modified by the regulations in this § 11.70 and the conditions and restrictions of that vessel's foreign fishing permit.

(ii) These logs are the basis for all reports required under §§ 611.4, 611.9, and 611.70.

(iii) Required data must be recorded clearly and concisely, in duplicate, and in English.

(iv) An authorized officer may remove the duplicate pages at any time. All duplicate pages of the logs not removed by an authorized officer must be submitted to the Regional Director within three weeks (21 days) after termination of a fishery due either to closure of the fishery, departure of a vessel from the grounds for the remainder of the season, or expiration of the fishing permit. The original logs must be retained on the foreign fishing vessel whenever it is in the EEZ for three years after the end of the permit period, as stated at § 611.9(a)(2).

(v) Measurements. (A) Estimates of discards in Section 2—Catch of the daily fishing and joint venture logs are on-deck estimates of round weight to at least the nearest tenth of a metric ton (0.1 mt) for Pacific whiting and to the nearest hundredth of a metric ton (0.01 mt) for incidental species.

(B) Transfer logs and Section 3—Production of the daily fishing and joint venture logs must be in product weights to the nearest 0.01 mt.

(C) Section 2—Catch of the daily fishing and joint venture logs (for processed fish) must be in factory weights to at least the nearest 0.1 mt for Pacific whiting, and to the nearest 0.01 mt for incidental species.

(D) *Numbers of individuals.* Salmonids, Pacific halibut, and Dungeness crab must be recorded in numbers of whole individuals.

(vi) If more than one target fishery is conducted, information for each fishery must be maintained in a separate log. If the target species is not Pacific whiting, the name of the target species must be entered after the title Section Two—Catch in the daily fishing or daily joint venture logs.

[47 FR 43970, Oct. 5, 1982, as amended at 51 FR 17032, May 8, 1986]

Subpart F—Western Pacific Ocean

§ 611.80 Seamount groundfish fishery.

(a) *Purpose.* This subpart regulates all foreign fishing for pelagic armorheads and alfonsins conducted under a Governing International Fishery Agreement in the EEZ of the western Pacific Ocean.

(b) *Authorized fishery*—(1) *Allocations.* Foreign vessels may engage in fishing only in accordance with applicable national allocations.

(2) *TALFF.* The TALFFs for the seamount groundfish fisheries are pub-

lished in the FEDERAL REGISTER. Current TALFFs are also available from the Regional Director.

(3) *Species definitions.* The category "other groundfish" used in TALFFs and in allocations includes all species of finfish caught incidental to directed fishing for pelagic armorheads and alfonsins except billfish, oceanic sharks, wahoo, and mahimahi, and other fish caught pursuant to § 611.81.

(4) *Open season.* Foreign fishing authorized under this subpart may begin at 0800 G.m.t. on May 1 and will terminate not later than 0800 G.m.t. on October 1. This fishery may also be closed in accordance with § 611.15.

(c) *Prohibited species.* All Continental Shelf fishery resources, and all other species of fish except for alfonsins, armorheads and other groundfish, are prohibited species and shall be treated in accordance with § 611.11.

(d) *Open area.* Foreign vessels may engage in fishing for pelagic armorheads, alfonsins, and other groundfish only in those portions of the fishery conservation zone west of the 180° meridian and north of 28° N. latitude.

(e) *Gear restrictions.* No gear other than trawl or bottom longline gear may be used.

(f) *Collection, maintenance and, reporting of data.* In addition to the requirements of §§ 611.4 and 611.9, each foreign nation or foreign fishing vessel shall collect, maintain, or report on a timely basis, accurate data relating to fishing operations as specified in this section. All submissions required by this section shall be sent to the Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731 or, in the case of logbook data, hand delivered to the National Marine Fisheries Service observer on board the vessel upon his request. The following logs and reports are required:

(1) *Fishing log.* (i) Each FFV which conducts fishing operations must maintain and submit a fishing log which contains the data required by § 611.9 (d) and (e).

(ii) In addition to the catch of allocated species, the log must contain the approximate weight (in kilograms) by genus, of the incidental catch of the prohibited species corals designated by the definitions of Continental Shelf fisheries resources in § 611.2 of this part.

(iii) If the fishing log is not delivered to a National Marine Fisheries Service observer on board the vessel, it shall be mailed to the Regional Director not later than 30 days following completion of fishing.

(2) *Annual report.* Each nation whose vessels engage in the seamount groundfish fishery shall submit by February 28 of the following year, annual catch and effort statistics as follows:

(i) Catch in metric tons by gear type by month by area to the nearest one-half degree (0.5°) latitude and by one degree (1°) longitude, by the following species groupings; pelagic armorhead, alfonsin, other groundfish;

(ii) Catch in kilograms of corals taken incidental to fishing operations by month by area to the nearest one-tenth degree (0.1°) latitude and longitude by the following species groupings: pink coral, gold coral, bamboo coral, other corals; and

(iii) Effort, in hours trawled or average number of hooks soaked per 24-hour period, by month by area to the nearest one-half degree (0.5°) latitude and one degree (1°) longitude.

[43 FR 59293, Dec. 19, 1978, as amended at 44 FR 76541, Dec. 27, 1979; 45 FR 14587, Mar. 6, 1980; 47 FR 44265, Oct. 7, 1982; 48 FR 34762, Aug. 1, 1983; 50 FR 35025, 35026, Aug. 28, 1985]

§ 611.81 Pacific billfish, oceanic sharks, wahoo, and mahimahi fishery.

(a) *Purpose.* (1) This section regulates all foreign fishing conducted under a Governing International Fishery Agreement which involves the catching of any species of billfish, oceanic shark, wahoo, or mahimahi (dolphin) in the exclusive economic zone (EEZ) of the United States in the Pacific Ocean, excluding the portion of the EEZ seaward of Alaska.

(b) *Definitions.* For the purposes of this section, these terms have the following meanings:

Billfish means broadbill swordfish (*Xiphias gladius*), blue marlin (*Makaira nigricans*), black marlin (*Ma-*

kaira indica), striped marlin (*Tetrapturus audax*), sailfish (*Istiophorus platypterus*), and shortbill spearfish (*Tetrapturus angustirostris*).

Closed area means that area of the EEZ in which foreign longline vessels subject to this section are prohibited from fishing.

Drift gill net means a floating rectangular net with one or more layers of mesh which is set vertifically in the water.

Exclusive economic zone means the zone established by Presidental Proclamation 5030, dated March 10, 1983 and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Mahimahi means "dolphin fish" (*Coryphaena hippurus* and *Coryphaena equisetis*).

Non-retention zone means that area of the EEZ in which all billfish, oceanic sharks, wahoo, mahimahi, and other fish caught by foreign longline vessels in the course of fishing under this section must be returned to the sea in accordance with the requirements of paragraph (k)(5) of this section.

Oceanic sharks means sharks of the families Carcharhinidae, Alopiidae, Sphyrnidae, and Lamnidae.

Regional Director means the Director of the Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731, telephone number: 213-514-6196; or a designee.

Retention zone means that area of the EEZ in which foreign longline vessels subject to this section may retain billfish, oceanic sharks, wahoo, and mahimahi to the extent that retention is authorized by this section.

Wahoo means fish of the species *Acanthocybium solanderi*.

(c) *Permits.* All foreign longline vessels which intend to fish must have a permit issued under § 611.3.

(d) *Vessel and gear identification.* All permitted vessels subject to this section must comply with the vessel and gear identification requirements of § 611.5.

(e) *Observers.* Permitted vessels subject to this section must comply with the observer requirements of § 611.8.

(f) *Prohibited species.* The owner or operator of each foreign vessel must minimize its catch or recipt of prohibited species and must report the vessel's activities as prescribed in § 611.11 of the Foreign Fishing Regulations.

(g) *Vessel reporting.* The operator of each foreign fishing vessel must report the vessel's activities as prescribed in § 611.4 and in the formats specified in Appendix B to Subpart A of the Foreign Fishing Regulations.

(h) *Collection and reporting of data.* Permitted vessels subject to this section must comply with the recordkeeping requirements of § 611.9, in addition to the following.

(1) The daily fishing log contents found at § 611.9(e) must contain the following additional information:

(i) The number of each species caught and retained;

(ii) The number of each species caught and released;

(iii) The number of each species released alive; and

(iv) The number of hooks set by type of bait.

(2) Daily fishing logs must be mailed to the Regional Director not later than 30 days following the completion of fishing or must be hand delivered to the NMFS observer aboard the vessel upon his request.

(3) *Report of marine mammal and sea turtle incidental catch.* Each foreign nation whose permitted vessels fish under this section must submit, through the designated representative, a report of marine mammal and sea turtle incidental catch in the manner prescribed by § 611.4(f)(4) within 60 days of leaving the EEZ in lieu of weekly reports. (Permits issued under this section do not authorize the take and retention of marine mammals and sea turtles in the EEZ).

(4) *Reporting of incidental catch by non-permitted tuna harvesting vessels.* [Reserved].

(i) *Management area groups.* For the purposes of this section, the EEZ of the Pacific Ocean (excluding the EEZ seaward of Alaska) is divided into two management area groups as follows:

(1) *FMP management area group.* The areas of the EEZ off the coasts of the Hawaiian and Midway Islands, Guam, American Samoa, and U.S. possessions are governed by the provisions of the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP) and are designated the FMP Management Area Group.

(2) *PMP management area group.* The areas of the EEZ off the U.S. west coast and the coasts of the Commonwealth of the Northern Mariana Islands are governed by the provisions of the Preliminary Fishery Management Plan for Billfish, Oceanic Sharks, Wahoo, and Mahimahi (PMP) in the Pacific Ocean and are designated the PMP Management Area Group.

(j) *Authorized fishery—FMP Management Area Group*—(1) *General.* Foreign vessels subject to this section are authorized to fish in the EEZ of the Hawaiian and Midway Islands, Guam, American Samoa, and the U.S. possessions subject to the requirements of this section.

(2) *Zones.* The FMP Management Area Group comprises the following closed-areas, non-retention zones and retention zones (each of which is measured from the baseline used to measure the U.S. territorial sea) described in Table 1:

TABLE 1

Management area	Closed area	Non-retention zone	Retention zone
Hawaiian Islands.	Within 12 nautical miles of all islands in the Hawaiian Islands chain.	(1) Between 12 and 100 miles from the islands of Hawaii, Kahoolawe, Kauai, Lanai, Maui, Molokai, Niihau, and Oahu of the State of Hawaii. (2) Between 12 and 50 nautical miles from the remaining islands of the State of Hawaii.	(1) Beyond 100 nautical miles from the islands of Hawaii, Kahoolawe, Kauai, Lanai, Maui, Molokai, Niihau, and Oahu of the State of Hawaii. (2) Beyond 50 nautical miles from the remaining islands of the State of Hawaii.
Guam	Within 12 nautical miles of Guam	Between 12 and 50 nautical miles from Guam.	Beyond 50 nautical miles from Guam.
American Samoa.	(1) Within a rectangle around the Tutuila and Manua islands of American Samoa bounded by 14° and 15° S. latitude and 168° to 171° W. longitude; and 2) Within a one degree (1°) square surrounding Swain's Island bounded by 10°33′ to 11°33′ S. latitude and 170°34′ to 171°34′ W. longitude.	None	(1) Areas of the EEZ outsides the rectangle bounded by 14° to 15° S. latitude to 170° W. longitude; and 168° to 171° W. longitude; and (2) Areas of the EEZ outside the one-degree (1°) square surrounding Swain's Island.
U.S. possessions.	Within 12 nautical miles of shore	None	Beyond 12 mautical miles from shore.

(3) *Effort plans.* Foreign longline vessels which desire to fish in the FMP Management Area Group are required to file effort plans two (2) months prior to entering the retention zones of the EEZ for fishing purposes. Effort plans must indicate the dates when fishing is expected to begin and cease and must specify the areas of the EEZ where the vessels intend to operate. Effort plans must be submitted to the Administrator, Western Pacific Program Office, NMFS, 2570 Dole Street, Honolulu, HI 96822, telephone number: 808-955-8831.

(4) *Catch and effort.* There will be no limit on the amount of fishing effort or the catch of billfish, oceanic sharks, mahimahi, and wahoo made by foreign longline vessels in the retention zones described in Table 1 of paragraph (j) of this section.

TABLE 2

Management area	Maximum closed areas
Hawaiian Islands	(1) Within 150 nautical miles of the Main Hawaiian Islands (islands east of 161° W. longitude); and (2) Within 100 nautical miles of the Northwestern Hawaiian Islands including Midway (islands west of 161° W longitude).
Guam [1]	Within 150 nautical miles of Guam.
American Samoa	(1) Within a rectangle around the Tutuila and Manua islands of American Samoa bounded by 14° to 15°K S. latitude and 168° to 171° W. longitude; and (2) Within a one-degree (1°) square surrounding Swain's Island bounded by 10°33′ to 11°33′ S. latitude and 170°34′ to 171°35′ W. longitude.
U.S. possessions	Within 12 nautical miles of shore.

[1] The northern boundary of the EEZ off the coast of Guam extends to those points which are equidistant between Guam and the island of Rota in the Commonwealth of the Northern Mariana Islands.

(5) *Determinations.* The Regional Director will determine by the following criteria within 30 days after a request by the Council, whether the non-retention zones presented in Table 1 of this section should be converted to closed areas or expanded up to the maximum closed areas presented in Table 2 of this section. All or portions of the area closures will be implemented as appropriate when the Regional Director has determined that foreign fishing has resulted in or is likely to result in—

(i) Adverse impacts on the catch, effort, gear, or economic performance of domestic vessels fishing in the area(s) for management unit species;

(ii) Excessive waste of management unit species in the affected area(s) of the EEZ;

(iii) Excessive costs to monitor foreign fishing and enforce the provisions of the FMP if the area(s) remains open; or

(iv) Adverse effects on one or more management unit species.

(6) *Factors considered.* Factors that will be considered by the Regional Director in making any determination described in paragraph 5 of this section will include the following:

(i) The current and projected level of domestic fishing and associated catch and landed value of catch in the affected area(s) in the absence of foreign fishing;

(ii) The importance of the area(s) to domestic vessels in terms of catch, effort, catch rates, and landed value of the catch of management unit species;

(iii) The level of foreign fishing likely to occur if the area(s) were to remain open to foreign fishing;

(iv) The likelihood of gear conflicts or waste of management unit species if foreign fishing were to be permitted; and

(v) Such other factors as the Regional Director determines to be important in making the determination as to area closures.

(7) *Notice of determination.* (i) The Secretary will publish a notice of any proposed determination described in paragraph (j)(5) of this section in the FEDERAL REGISTER for public comment, unless the Secretary finds good cause that such notice and public review are impracticable or contrary to the public interest. During the public comment period, the aggregate data upon which the proposed determination is based will be available for public inspection at the Regional Office during business hours.

(ii) If the Secretary determines, for good cause, that a determination described in paragraph (j)(5) of this section must be issued without affording a prior opportunity for public comment, public comments on the notice will be received by the Secretary for a period of 15 days after the effective date of the notice. During any such 15-day period, the aggregate data upon which the notice was based will be available for public inspection in the office of the Regional Director during business hours.

(iii) Any notice issued under this section will not be effective until 30 days after the publication in the FEDERAL REGISTER, unless the Secretary finds and publishes with the notice good cause for an earlier effective date.

(iv) Notices issued under this section will remain in effect until the expiration data stated in the published notice or until rescinded, modified, or superseded.

(v) Nothing contained in this section limits the authority of the Secretary to issue emergency regulations under section 305(e) of the Magnuson Act.

(8) *Drift gill nets.* The use of drift gill nets in the FMP Management Area Group is prohibited.

(k) *Authorized fishery—PMP Management Area Group*—(1) *General.* Foreign longline vessels subject to this section are authorized to fish in the EEZ of the Northern Mariana Islands and the U.S. west coast beyond 12 miles from the baseline used to measure the U.S. territorial sea, subject to the requirements of this section. Only foreign longline vessels are eligible for permits to fish in the PMP Management Area Group.

(2) *Zones.* The PMP Management Area Group comprises the following closed areas, non-retention and retention zones (each of which is measured from the baseline used to measure the U.S. territorial sea) described in Table 3:

TABLE 3

Management area	Non-retention zone	Retention zone
West Coast	Between 12 and 100 nautical miles offshore.	Beyond 100 nautical miles.
Northern Mariana Islands,[1] Rota, Tinian, Aguijan and Saipan.	Between 12 and 50 nautical miles from Tinian, Aguijan, Rota, and Saipan.	Beyond 50 nautical miles of Rota, Tinian, Aguijan, and Saipan. Beyond 12 nautical miles of the remaining islands of the Northern Mariana Islands.

Closed areas: Foreign longline vessels subject to paragraph (j) of this section are prohibited from fishing within 12 nautical miles of the U.S. west coast and the Northern Mariana Islands.

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[1] The southern boundary of the EEZ off the coast of the Northern Mariana Islands extends to those points which are equidistant between Guam and the island of Rota.

(3) *Total allowable level of foreign fishing (TALFF), joint venture processing (JVP), national allocations, and reserves.*

(i) *TALFF, reserve, and JVP amounts.* The TALFFs, amounts of fish held in reserve, and amounts of JVP are published in the FEDERAL REGISTER. Current TALFFs, reserves, and JVPs are also available from the Regional Director.

(ii) *TALFF and national allocations.* (A) The total amount of each species of billfish, oceanic sharks, wahoo, and mahimahi which may be caught and retained in each area of the PMP Management Area Group by foreign vessels subject to paragraph (k) of this section is limited to the TALFF for each applicable area and to the amount of the applicable national allocation.

(B) No foreign vessels subject to paragraph (k) of this section may catch and retain billfish, oceanic sharks, wahoo, and mahimahi within the non-retention zones set out in the table at paragraph (k)(2) of this section.

(iii) *Determination.* (A) As soon as practicable after September 1 of each year, and upon receipt of a written request from a foreign nation, the Regional Director, Southwest Region, will determine, for each species for which a reserve has been established, the amount of fish which has been harvested to date by U.S. vessels in each applicable area.

(B) If the Regional Director determines that the amount of fish of a species harvested by vessels of the United States in an area is less than 80 percent of the expected domestic harvest for that species in that area, the Regional Director will apportion to TALFF the entire amount of the reserve for the applicable species in the applicable area. No reserve amounts will be apportioned to TALFF if domestic vessels have harvested 80 percent or more of the expected domestic harvest for that species in the applicable area by the date of this determination.

(iv) *Notice.* The Assistant Administrator for Fisheries, NOAA, will publish in the FEDERAL REGISTER a notice of each determination made under paragraph (k)(3)(iii) of this section.

(4) Cancellation of authority to retain.

(i) The authority of a foreign longline vessel to retain an applicable species is canceled:

(A) When the national allocation for the applicable species is reached; or

(B) At the date and time specified in the notification issued by the Assistant Administrator under paragraph (k)(4)(ii) of this section.

(ii) The Assistant Administrator will determine, on the basis of the information specified in § 611.13, when the TALFF or optimum yield (OY) of a billfish species, oceanic sharks, wahoo, or mahimahi in an area of the PMP Management Area Group will be reached. At least forty-eight hours before the applicable TALFF or OY will be reached, the Assistant Administrator will notify both the affected foreign nation(s) and the designated representative for any affected fishing vessel that authority to retain the applicable species is canceled.

(iii) Any cancellation under paragraph (k)(4) of this section will remain in effect until a new or increased allocation becomes available.

(iv) The closure provisions of § 611.13 do not apply to foreign longline vessels fishing subject to paragraph (k) of this section.

(5) *Prohibited species*—(i) *General.* The following are prohibited species under paragraph (k) of this section.

(A) All species of fish over which the United States exercises exclusive fishery management authority and for which there is no national allocation;

(B) All billfish, oceanic sharks, wahoo, and mahimahi caught in excess of an applicable OY, TALFF, or national allocation; and

(C) All billfish, oceanic sharks, wahoo, and mahimahi caught in a non-retention zone. (See Table 3 at paragraph (k)(2) of this section.)

(ii) *Treatment.* All prohibited species will be treated in accordance with § 611.11.

(iii) *Additional requirements for billfish and oceanic sharks.* Unless otherwise specifically instructed by a U.S. observer or authorized officer, all prohibited billfish and oceanic sharks must be released by cutting the line (or by other appropriate means) without removing the fish from the water.

(iv) *Rebuttal of presumption.* Foreign vessels fishing subject to paragraph (k) of this section may rebut the presumption of § 611.11(d) by

(A) Storing all prohibited species caught outside the EEZ in a separate part of the vessel's hold which can be sealed, and arranging inspection and sealing of the vessel's hold by U.S. authorities before commencing fishing in the EEZ or in non-retention zones; or

(B) Other reasonable means which may be authorized by the Regional Director if, in consultation with the U.S. Coast Guard, the Regional Director determines that special circumstances warrant alternative arrangements.

(v) *Procedures for hold sealing.* (A) Inspection and sealing of a foreign vessel's hold may be arranged by contacting the Southwest Region Office, National Marine Fisheries Service, 2570 Dole Street, Honolulu, HI 96822, telephone number: 808-955-8831, at least 48 hours in advance of the date for which inspection is requested.

(B) Ports at which such inspections may be made are Honolulu and Kahului, Hawaii, Agana, Guam; and San Diego, California.

(C) Additional ports for hold inspections may be arranged with the Regional Director.

(vi) *Other requirements.* The designation of ports for hold inspection and sealing does not modify any port entry arrangements or requirements (if any) of Governing International Fishery Agreements or the notification requirements of any other laws or regulations of the United States.

[52 FR 5984, Feb. 27, 1987]

§ 611.82 Precious coral fishery.

(a) *Purpose.* This section regulates foreign fishing under a Governing International Fishery Agreement for precious corals within the EEZ seaward of Hawaii, Guam, and American Samoa.

(b) *Definitions.* For purposes of this section, the following terms are defined:

(1) *Exploratory area* means the following permit areas in the EEZ outside the closed areas listed in § 611.82(g).

(i) Permit Area X-P-H. All coral beds seaward of the State of Hawaii.

(ii) Permit Area X-P-AS. All coral beds seaward of American Samoa.

(iii) Permit Area X-P-G. All coral beds seaward of Guam.

(2) *Precious coral* means any of the following species of coral:

Pink coral (also known as red coral) *Corallium secundum*
Pink coral (also known as red coral) *Corallium regale*
Pink coral (also known as red coral) *Corallium laauense*
Gold coral *Gerardia sp.*
Gold coral *Callogorgia gilberti*
Gold coral *Narella sp.*
Gold coral *Calyptrophora sp.*
Bamboo coral *Lepidisis olapa*
Bamboo coral *Acanella sp.*
Black coral *Antipathes dichotoma*
Black coral *Antipathes grandis*
Black coral *Antipathes ulex*

(3) *Regional Director* means the Southwest Regional Director, National Marine fisheries Service, 300 S. Ferry Street, Terminal Island, California 90731.

(4) *Selective gear* means gear that can be used to harvest coral selectivley by differentiating as to type, size, quality, or other characteristics.

(c) *Authorized fishery.* (1) *Allocations.* Foreign vessels may engage in fishing only in accordance with applicable national allocations.

(2) *TALFF and reserve.* The total allowable levels of foreign fishing (TALFF), joint venture processing (JVP), the amounts of coral set aside as reserves, the estimated domestic annual harvest (DAH), and domestic annual processing (DAP) in exploratory areas are published in the FEDERAL REGISTER prior to the beginning of each fishing year. Current TALFF and JVP amounts are available from the Regional Director.

(3) *Determination of TALFF and reserves.* The quotas for each of the three exploratory areas (set forth in Table 1 to 50 CFR Part 680) will be held in reserve for harvest by vessels of the United States in the following manner:

(i) At the start of the fishing year (July 1), the reserve for each exploratory area will equal the quota minus the estimated domestic annual harvest for that year.

(ii) As soon as practicable after December 31 each year, the Regional Director will determine the amount harvested by vessels of the United States between July 1 and December 31 of that year.

(4) *Release of reserves.* The Secretary will release to TALFF for each exploratory area an amount of coral equal to the quota minus two times the amount harvested by vessels of the United States in that July 1-December 31 period.

(5) The Secretary will publish in the FEDERAL REGISTER a notice of the Regional Director's determination and a summary of the information on which it is based as soon as practicable after the determination is made.

(d) *Open season.* Foreign fishing authorized under this section may be conducted from the time that the reserve is released to TALFF until the national allocation has been reached. This fishery will be closed in accordance with § 611.13.

(e) *Prohibited species.* All species of fish over which the United States exercises fishery management authority and for which there is no applicable national allocation are prohibited species and will be treated in accordance with § 611.11. All black corals are prohibited species.

(f) *Open area.* Foreign vessels may engage in fishing for precious coral in the three exploratory areas in the EEZ seaward of Hawaii, Guam, and American Samoa, but not in those coral beds designated in § 611.82(g).

(g) *Closed areas.* The following precious coral beds are closed to all foreign fishing:

Coral Bed—Midpoint

(1) Ke-ahole Point, Hawaii, 19°46.0′ N. latitude, 156°06.0′ W. longitude;

(2) Makapuu, Oahu, Hawaii, 21°18.0′ N. latitude, 157°35.5′ W. longitude;

(3) Kaena Point, Oahu, Hawaii 21°35.4′ N. latitude, 158°22.9 W. longitude;

(4) WestPac Bed, 23°18.0′ N. latitude, 162°35.0′ W. longitude;

(5) Brooks Banks, 24°06.0′ N. latitude, 166°48.0′ W. longitude; and

(6) 180 Fathom Bank, N.W. of Kure, 28°50.2′ N. latitude, 178°53.4′ W. longitude.

Each coral bed includes the area within two nautical miles of the midpoint.

(h) *Gear restrictions.* (1) No foreign vessel fishing for coral may use gear other than:

(i) Dredges with tangle nets; or

(ii) Selective gear.

(2) A foreign vessel may use only selective gear to harvest coral from the EEZ of the main Hawaiian Islands, i.e., south and east of a line midway between Niihau and Nihoa Islands.

(i) *Collection, maintenance and reporting of data.* In addition to the requirements of §§ 611.4 and 611.9, each foreign fishing vessel must collect, maintain, or report on a timely basis accurate data relating to fishing operations as specified in this section. The requirement of § 611.9(d) that each vessel maintain a daily fishing log is waived for vessels fishing for coral under this section. In lieu of that log, vessels must enter into the logbook provided to the vessel by the National Marine Fisheries Service by midnight of the day following the day on which the coral was taken, the information specified in paragraphs (i)(1)(i) through (i)(1)(x) of this section. All submissions required by this section must be sent to the Regional Director, or, in the case of logbook data, must be hand delivered to the National Marine Fisheries Service observer (if an observer is on board the vessel) upon request. The following log and reports are required:

(1) Whenever a permitted vessel lands coral harvested under a permit, the permittee must within 72 hours mail to the Regional Director a copy of the log with complete harvest information for the coral sold or delivered including:

(i) Name of vessel;

(ii) Call sign of vessel;

(iii) Permit number of vessel;

(iv) Area fished by statistical area;

(v) Average depth of water where the coral was harvested;

(vi) Weight of coral harvested by species, to the nearest tenth of a kilogram (landed weight, air dried for at least 24 hours);

(vii) Fishing effort in hours wh the coral was harvested;

(viii) Dates of harvest;

(ix) Method of harvest;

(x) Observations that may be ma about the habitat (current, botto type, bottom topography, botto slope);

(xi) Amount of coral sold by speci

(xii) Sale price;

(xiii) Date of sale; and

(xiv) Name(s) and address(es) buyer(s).

(2) For any coral that is not sol within 72 hours of landing the permi tee shall mail to the Regional Directo within 72 hours of its sale the infor mation specified in paragraph (i)(1)(xi) through (i)(1)(xiv) of thi section.

(3) *Annual report.* Each natio whose vessels engage in the preciou coral fishery must submit by Novem ber 30 of the following fishing yea annual catch and effort statistics a follows:

(i) Catch in kilogram by gear type by month by area to the nearest one-hal degree (0.5°) latitude and by one degree (1°) longitude, by the followin species groupings: pink (red), gold, bamboo, other precious coral, and non-precious coral; and (ii) effort, in hours fished by month by area to the nearest one-half degree (0.5°) latitude and one degree (1°) longitude.

[48 FR 39230, Aug. 30, 1983, as amended at 50 FR 35025, 35026, Aug. 28, 1985]

Subpart G—North Pacific Ocean and Bering Sea

§ 611.90 General provisions.

(a) *Purpose.* This subpart regulates all foreign fishing conducted under a Governing International Fishery Agreement in the EEZ seaward of the State of Alaska.

(b) *Open season.* Except as otherwise specified in the following sections, fishing by foreign vessels may be conducted throughout the year. The specific times for opening and closing seasons and areas in this subpart shall be 0800 G.m.t. on the dates indicated. The fisheries regulated under this subpart may also be closed in accordance with § 611.13.

(c) *Fishing areas*—(1) *General.* Unless specifically authorized, no foreign vessel may engage in fishing within twelve nautical miles of the baseline used to measure the territorial sea.

(2) *Support operations.* Loading and other support operations by foreign vessels are permitted only in areas where the vessel being supported is authorized to fish, and in the following areas between three and twelve nautical miles from the baseline used to measure the territorial sea:

(i) Near Forrester Island, Alaska, bounded on the north by 54°54′ N. latitude, on the east by 133°16′ W. longitude, and on the south by 54°44′ N. latitude;

(ii) On the east side of Kayak Island, Alaska, between 59°48′ N. latitude and 59°56′ N. latitude west of 143°53′ W. longitude, and on the west side by Kayak Island between 59°52′ N. latitude and 60°07′ N. latitude east of 145° W. longitude;

(iii) North of Tonki Cape on Afognak Island, Alaska, bounded on the north by 58°35′ N. latitude, on the south by 58°25′ N. latitude, on the west by 152°02′ W. longitude and on the east by 151°52′ W. longitude;

(iv) North and west of Sanak Island, Alaska, bounded on the north by 54°36′ N. latitude, on the south by 54°26′ N. latitude, on the west by 163°05′ W. longitude and on the east by 162°40′ W. longitude;

(v) On the south side of Unalaska Island, Alaska, between 167°18′ W. longitude and 167°40′ W. longitude (from January 1 to October 15, only);

(vi) On the north side of Unalaska Island, Alaska, between 167°15′ W. longitude and 167°35′ W. longitude (from January 1 to October 15, only);

(vii) On the south side of Umnak Island, Alaska, between 168°15′ W. longitude and 168°30′ W. longitude (from October 15 to January 1, only);

(viii) On the north side of Umnak Island, Alaska, between 168°25′ W. longitude and 168°40′ W. longitude and between 168°50′ W. longitude and 169°00′ W. longitude (from October 15 to January 1, only);

(ix) Off St. George Island of the Pribilof Islands, Alaska (from November 1 to May 1, only);

(x) On the north side of St. Matthew Island, Alaska, between 172°29′ W. longitude, and 172°46′ W. longitude, and on the south side of St. Matthew Island, between 172°17′ W. longitude, and 172°35′ W. longitude, and between 172°54′ W. longitude, and 173°04′ W. longitude.

(d) *Gear restriction.* No foreign vessel may possess crab pots in the EEZ while engaging in any fishery other than the Tanner crab fishery.

(e) *Statistical reporting.* (1) In addition to the requirements of § 611.9, the owner or operator of any foreign fishing vessel shall maintain catch and effort statistics as required by this subpart and shall report the information, through the designated representative, to the Director, Alaska Region, National Marine Fisheries Service, Juneau, Alaska, U.S.A. 99801.

(2) In the Gulf of Alaska groundfish fishery and the Bering Sea groundfish fishery, the owner and operator of each FFV must record and report, in addition to allocated and authorized species, the prohibited species salmonids (species code 210) and halibut (species code 722) which are discarded, in terms of the number of fish. In the Bering Sea groundfish fishery the owner and operator of each FFV must record and report additionally, the prohibited species herring (species code 209) which are discarded, to the nearest tenth of a metric ton (0.1 mt).

(f) *Initial inspection.* (1) An FFV reporting fish or fish products aboard in a BEGIN report required by § 611.4(c)(1) may be inspected prior to fishing within the EEZ. If the FFV will be inspected, notice of an inspection will be sent to the FFV within 24 hours after the transmission of the BEGIN report. Each FFV that will be inspected must not harvest or process fish in the EEZ until the inspection is completed by an authorized officer. If notice of an inspection is not sent to the FFV within 24 hours after transmission of the BEGIN report, the FFV may begin to harvest or process fish.

(2) It will be presumed that unreported fish or fish products were harvested in the EEZ unless the vessel has on board records of the amounts of fish and fish products caught outside the EEZ. The records must be in

English and provide the same information required by § 611.9 (b) and (c).

(16 U.S.C. 971 *et seq.*; 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 1821, 1855)

[43 FR 59293, Dec. 19, 1978, as amended at 47 FR 10228, Mar. 10, 1982; 48 FR 34762, Aug. 1, 1983; 50 FR 35025, 35026, Aug. 28, 1985]

§ 611.91 [Reserved]

§ 611.92 Gulf of Alaska groundfish fishery.

(a) *Purpose and scope.* (1) This section regulates foreign fishing for groundfish in the EEZ of the Gulf of Alaska, which includes that portion of the North Pacific Ocean beyond three nautical miles from the baseline used to measure the U.S. territorial sea, exclusive of the Bering Sea, between 132°40′ W. longitude and 170°00′ W. longitude. The regulatory areas and districts of the Gulf of Alaska are in Figure 1.

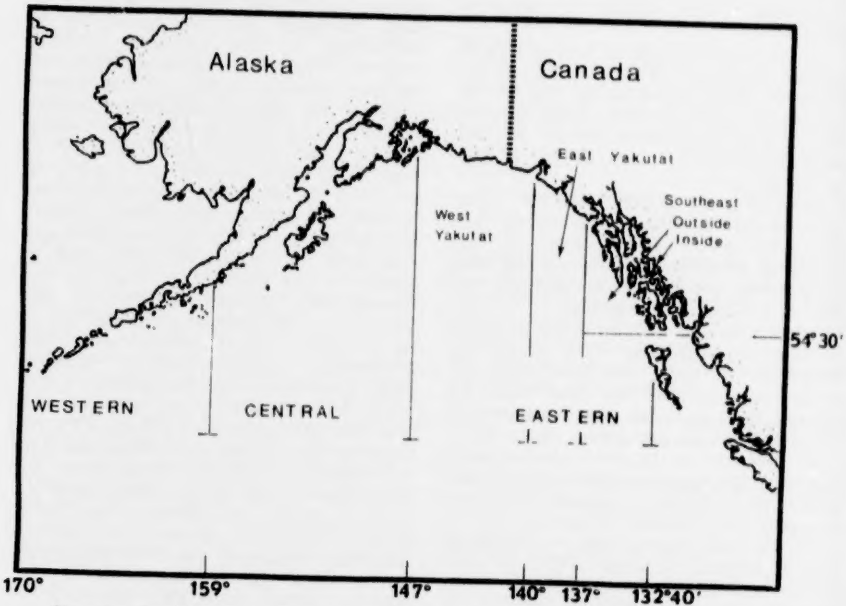


Figure 1 -- Regulatory Areas of the Gulf of Alaska (FMP)

(2) For regulations governing fishing for groundfish in the Gulf of Alaska by vessels of the United States, see 50 CFR Part 672.

(b) *Categories of species.* Four categories of species are recognized for regulatory purposes and they are set forth in Table 1. The term "groundfish" means species in all categories except the "prohibited species" category.

TABLE 1—CATEGORIES OF SPECIES INVOLVED IN THE GULF OF ALASKA GROUNDFISH FISHERY

Target species [1]	"Other Species" [2]	Prohibited species [3]	Nonspecified [4]
Pollock, Pacific cod, flounders, sablefish, rockfish, and thornyhead rockfish.	Sculpins, sharks, skates, eulachon, smelts, capelin, octopus, Atka mackerel, and squid.	Pacific herring (*Clupea harengus pallasi*); salmonids (Salmonidae); Pacific halibut (*Hippoglossus stenolepis*); king crab (*Paralithodes spp. and Lithodes* spp.); Tanner crab (*Chionoecetes* spp).	All species not included in these categories.

[1] Commercially important; specific TAC applies to each species or species group; records must be maintained.

[2] The target quota for these species as a category is set at five percent of the combined target quotas of the target species. Records of the catch or receipt of "other species" must be kept.

[3] Except to the extent that their harvest is authorized under other applicable law, the catch or receipt of these species must be minimized and, if caught or received, they must be returned to the sea immediately in accordance with § 611.11 of this part. Records must be maintained as required by these §§ 611.9, 611.90(e)(2), and this section. Any species of fish for which there is no foreign allocation must be treated in the same manner as "prohibited species" and records must be maintained of any catches or receipts of these species, except for non-specified species.

[4] The term "non-specified species" means for purposes of this section those species that are not listed in paragraphs (b)(1), (2), and (3) of this section and are not managed under authority of other fishery management plans or under authority of the International Pacific Halibut Commission. Catch records need not be kept.

(1) The term "target species" means, for purposes of this section, species that are commercially important and are generally targeted upon by the groundfish fishery. They include pollock, Pacific cod, flounders, sablefish, rockfish, and thornyhead rockfish. Records of the catch or receipt of each target species or species group must be kept.

(2) The term "other species" means, for purposes of this section, species that currently have only slight economic value and are not generally targeted upon, but which are significant components of the ecosystem or have economic potential. They include sculpins, sharks, skates, eulachon, smelts, capelin, octopus, Akta mackerel, and squid. The total allowable catch (TAC) for those species as a category is set at five percent of the combined quotas of the TACs of the target species. Records of the catch or receipt of "other species" must be kept.

(3) The term "prohibited species" means for purposes of this section; Pacific herring (*Clupea harengus pallas*); salmonids (Salmonidae); Pacific halibut (*Hippoglossus stenolepis*); king crab (*Paralithodes* spp. and *Lithodes* spp.); Tanner crab (Chionoecetes spp.) Except to the extent that their harvest is authorized under other applicable law, the catch or receipt of these species must be minimized and, if caught or received, they must be returned to the sea immediately in accordance with § 611.11 of this part. Records must be maintained as required by §§ 611.9, 611.90(e)(2), and this section. Any species of fish for which there is no foreign allocation must be treated in the same manner as "prohibited species" and records must be maintained of any catches or receipts of these species, except for "non-specified species". Catches or receipts of "non-specified species" must be treated in the same manner as "prohibited species", but records are not required of catches or receipts of these species.

(4) The term "non-specified species" means, for purposes of this section, species that are not listed in paragraphs (b)(1), (2), and (3) of this section and are not managed under authority of other fishery managment plans or under authority of the International Pacific Halibut Commission. Catch records need not be kept.

(c)(1) *TAC's, TALFF's, Reserves, and PSC limits.* (i) See 50 CFR Part 672, Subpart B, for procedures to determine total allowable catches (TACs), domestic annual processing (DAP), joint venture processing (JVP), reserves, total allowable level of foreign fishing (TALFF), and prohibited species catch limits. Species listed in paragraph (b)(3) and Table 1 of this section as "prohibited species," species listed in paragraph (b)(4) of this section as "non-specified species," and species for which the TALFF is zero, including species for which a PSC limit has been specified, will be treated in the same manner as prohibited species under § 611.11.

(ii) Apportionment of reserves and initial DAH, and adjustment of PSC limits. See 50 CFR Part 672, Subpart B, for procedures to apportion reserves, initial domestic annual harvest (DAH), and adjustment of PSC limits.

(2) *Fishing permitted.* (i) The catching in the Gulf of Alaska and retention of the amount of any groundfish for which a nation has an allocation is permitted, except in the following circumstances:

(A) When vessels of a nation have caught the amount of the allocation of that nation for any groundfish species (or species group, e.g. "other rockfish") in any regulatory area, fishing for groundfish in that regulatory area by vessels of that nation is prohibited, even if (*1*) allocations of other species for that nation in that regulatory area have not been reached, or (*2*) the nation has not received a notice issued pursuant to § 611.13(c) prohibiting fishing by vessels of that nation in that regulatory area; or

(B) On the effective date of a notice of closure issued by the Secretary pursuant to the procedures of § 611.13(c), fishing by vessels of that nation is prohibited for the groundfish species (or species groups), in the regulatory areas and during the periods stated in the notice; or

(C) As otherwise prohibited by this section or 50 CFR Part 672, Subpart B.

(D) The provisions of paragraph (c)(2)(i)(A) of this section do not apply to foreign vessels fishing with longline gear unless the allocation reached is for Pacific cod or sablefish. However, when the area allocation of any groundfish species, or species group other than Pacific cod, or sablefish is reached, any subsequent catch of that species in that area by vessels fishing with longline gear shall be considered catch of a "prohibited species" and treated in accordance with the provisions of § 611.11. Catches of those species or species group in the target and other species categories that become prohibited species must be recorded and reported as required by §§ 611.4 and 611.9.

(E) A notice of closure issued pursuant to paragraph (c)(2) of this section shall not apply to any receipt or processing by foreign vessels of United States harvested fish authorized by a permit issued by the Department of Commerce under the Act. Receipt of U.S. harvested fish and the conduct of other operations in support of U.S. vessels by foreign fishing vessels in the management area may continue until specifically prohibited under the procedures prescribed in the applicable permit.

(ii) Each year, the Secretary shall issue a notice of closure pursuant to the procedures of § 611.13(c), prohibiting fishing with specified gear types for any groundfish species, species group, or species category in the applicable regulatory area or district by vessels subject to this section, when the Regional Director determines that one or more of the following catch limitations will be reached:

(A) TAC for any groundfish species, species group, or species category in a regulatory area or district: the Secretary will issue a notice prohibiting, through December 31, fishing using trawl gear for groundfish in that regulatory area or district by vessels subject to this section, except that if the TAC for sablefish or Pacific cod in a regulatory area or district will be reached, the Secretary will prohibit fishing for groundfish in that regulatory area or district by all vessels subject to this section.

(B) TALFF for any groundfish species, species group, or species category, in a regulatory area or district: the Secretary shall issue a notice prohibiting through December 31 fishing using trawl gear for groundfish in that regulatory area or district, except that if the TALFF for sablefish or Pacific cod in a regulatory area or district will be reached, the Secretary shall prohibit fishing for groundfish in that regulatory area or district by all vessels subject to this section.

(C) The allocation of a nation for any groundfish species, species group, or species category in a regulatory area or district: the Secretary shall issue a notice prohibiting through December 31 in that regulatory area or district, fishing using trawl gear for groundfish by vessels of that nation; and retention of that species, species group, or species category by vessels of that nation using longline gear. However, if a national allocation for sablefish or Pacific cod in a regulatory area or district will be reached, the Secretary shall prohibit fishing for groundfish in that regulatory area or district by all vessels of that nation through December 31.

(iii) When a notice has been issued pursuant to this subsection prohibiting fishing, vessels of a nation subject to this section may resume fishing in a regulatory area or district: (A) On the effective date of a notice issued pursuant to § 611.13(c) rescinding the notice of closure previously issued; or (B) when the time period stated in the notice of closure expires.

(d) *Open areas.* (1) Except as prohibited in paragraph (e) of this section, foreign fishing for groundfish is permitted in the Gulf of Alaska beyond twelve nautical miles from the baseline used to measure the U.S. territorial sea, and between three and twelve nautical miles from the base line used to measure the U.S. territorial sea between 169°00′ and 170°00′ W longitude.

(2) In addition to the areas in which foreign fishing is permitted under paragraphs (d) and (e) of this section, foreign vessels holding Department of Commerce permits to receive United States harvested fish at sea may also receive only United States harvested fish and conduct other operations in support of U.S. vessels in areas where foreign fishing is prohibited if: (i) That area is beyond three nautical miles from the baseline used to measure the U.S. territorial sea; (ii) receipt of the U.S. harvested fish or conduct of such support operations by the foreign vessel is in an area and during a time when fishing by U.S. vessels being supported is permitted under 50 CFR Part 672; and (iii) receipt by the foreign vessel or conduct of such support operation in that area is not prohibited by the terms and conditions of that vessel's permit to receive U.S. harvested fish.

(e) *Closed areas*—(1) *All fishing.* Foreign fishing for groundfish is prohibited in the following portions of the management area:

(i) Between 132°40′ W. longitude and 140°00′ W. longitude; and

(ii) *"Davidson Bank":* between 163°04′ W. longitude and 166°00′ W. longitude north of 53°00′ N. latitude.

(2) *Fishing with trawl gear.* Trawling for groundfish by vessels subject to this section is prohibited in the following areas during the periods specified:

(i) 147° W. longitude to 157° W. longitude from February 16 to June 1.

(ii) The "Kodiak Gear Area" from two days prior to the opening of the king crab season (in Registration Area K of State of Alaska commercial king crab fishing regulations) through February 15. The Regional Director shall notify the designated representatives of each foreign nation of the opening date of the king crab season at least 4 days before that opening. This area is bounded by straight lines connecting points on shore to the following coordinates in the order listed:

North latitude	West longitude
57°25.2′ (shoreline, north side Wide Bay, Alaska Peninsula	156°19′
55°11′	156°19′
55°40′	155°17′
56°03′	153°45′
56°30′	153°00′
56°46′	152°20′
57°11′	151°14′
57°19′	150°57′
58°00′	150°00′
59°39.3′ (shoreline, Harris Bay, Kenai Peninsula)	150°00′

(iii) *Three "Kodiak halibut areas,"* from 5 days before until 5 days after the first opening of the U.S. halibut fishing season, if the first opening of that fishing season occurs after May 26 (as established by regulations of the International Pacific Halibut Commission).

(A) The three "Kodiak halibut areas", bounded respectively by rhumb lines, are described as follows:

(*1*) 58°30′ N. lat. to 59°30′ N. lat., between 147°40′ W. long. and 150°20′ W. long.

(*2*) 57°40′ N. lat. to 58°05′ N. lat., between 148°50′ W. long. and 150°30′ W. long.

(*3*) 55°30′ N. lat. to 56°25′ N. lat., between 155°45′ W. long. and 156°30′ W. long.

(B) The Regional Director shall give notification of the first opening date of the U.S. halibut fishing season to the designated representative of each foreign nation at least 7 days before the U.S. halibut fishing season first opens.

(3) *Fishing with longline gear*—(i) *General.* For the purpose of this section, "longline" means (A) a stationary, buoyed, and anchored line with hooks or pots attached, or (B) the taking of fish by means of such a device.

(ii) *Longline fishing for sablefish.* Longline fishing for sablefish by vessels subject to this section between 140° and 169° W. longitude is prohibited: (A) Landward of the 400 meter depth contour, from 0800 GMT May 1 to 0800 October 1; and (B) landward of the 500 meter depth contour, from 0800 GMT October 1 to 0800 GMT May 1.

(iii) *Longline fishing for Pacific cod.* Longline fishing for Pacific cod by vessels subject to this section between 140° and 169° W. longitude is prohibited landward of the 400 meter depth contour during the halibut fishing seasons as established by regulations of the International Pacific Halibut Commission. The Regional Director shall give notification of the opening and closing dates of the U.S. halibut fishing seasons to the designated representative of each foreign nation, at least 7 days before the opening and closing dates of the U.S. halibut fishing seasons.

(f) *Gear restrictions*—(1) *Vessels using trawl gear.* Vessels subject to this section may use only pelagic trawls (trawls in which neither the net nor the otter boards operate in contact with the seabed) equipped with recording net-sonde devices functioning properly during each tow from January 1 through December 31 in the area between 140° W. longitude and 147° W. longitude, and from December 1 through May 31 between 147° W. longitude and 170° W. longitude.

(i) The footrope of the net must not be in contact with the seabed for more than 10 percent of any tow, as inidcated by the net-sonde readout.

(ii) Vessels subject to this section must not attach to a pelagic trawl any protective device (such as chafing gear, rollers, or bobbins) which would make it possible to fish on the seabed.

(2) *Vessels using longline gear.* Vessels subject to this section shall not use gear other than longline gear when conducting a directed fishery for:

(i) Sablefish; or

(ii) Pacific cod in the area which is both west of 157° west longitude and landward of the 500 meter depth contour.

(g) *Inseason adjustments.* See 50 CFR Part 672, Subpart B, for procedures to make inseason adjustments. It is unlawful for any person to conduct any fishing contrary to a notice of inseason adjustment issued under 50 CFR 672.22(a).

(h) *Additional statistical report—Annual.* In addition to the requirements of §§ 611.4 and 611.9, each nation whose fishing vessels fish subject to this section shall submit a written annual report to the Regional Director setting forth catch and effort statistics regarding fishing activities conducted under this section during the annual period from January 1 through December 31 by May 31 of the following year. A two-month report will be required by May 31, 1981, for the period November 1 through December 31, 1980.

(1) Foreign vessels fishing with trawl gear shall report:

(i) *Effort* in hours trawled and number of days fished, by vessels class, by gear type, by month, by 1.2° (lat.) x 1° (long.) fishing area;

(ii) *Catch* in metric tons, by vessel class by gear type, by month, by ½° (lat.) x 1° (long.) fishing area, by the following species categories: yellowfin sole, rock sole, flathead sole, arrowtooth flounder, other flounders, Pacific ocean perch, other rockfish, thorneyhead rockfish, Pacific cod, sablefish (blackcod), walleye (Alaska) pollock, Atka Mackerel, squid, any other species taken in excess of 1,000 metric tons, and other fishes.

(2) Foreign fishing vessels fishing with longline gear shall report:

(i) *Effort* in number of longline units (300 fathoms of longline or groundline per unit) and number of hooks per unit, number of pots, duration of soaking time for longlines and pots, and number of days fished, by vessel class, by gear type, by month, by ½° (lat.) x 1° (long.) fishing area; and

(ii) *Catch* in metric tons, by vessel class, by gear type, by month, by ½° (lat.) x 1° (long.) fishing area, by the species categories listed in paragraph (g)(1)(ii) of this section.

[46 FR 73494, Nov. 5, 1980, as amended at 46 FR 49129, Oct. 6, 1981; 47 FR 23938, 23939, June 2, 1982; 47 FR 44265, Oct. 7, 1982; 48 FR 34762, Aug. 1, 1983; 48 FR 43048, Sept. 21, 1983; 50 FR 35026, Aug. 28, 1985; 52 FR 7872, Mar. 13, 1987; 53 FR 7759, 7762, Mar. 10, 1988]

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

(a) *Purpose.* (1) This section regulates foreign fishing for squid, octopus, and all species of finfishes except salmon, Pacific halibut, herring, and steelhead, within that portion of the Bering Sea, and that portion of the North Pacific Ocean adjacent to the Aleutian Islands west of 170° W. longitude, over which the United States exercises exclusive fishery management authority under the Act (hereinafter referred to in this section as the "management area"). See Appendix C to Subpart A, Figure 4.

(2) For regulations governing fishing in the Bering Sea and Aleutian Islands groundfish fishery by vessels of the United States, see 50 CFR Part 675. Regulations governing foreign fishing for snails are set forth in 50 CFR 611.94.

(3) The optimum yield for the fishery regulated by this section and by 50 CFR Part 675 is a range of 1.4 to 2.0 million mt for target species and the "other species" category in the management area to the extent this amount can be harvested consistently with this part and 50 CFR Part 675, plus the amounts of "nonspecified species" taken incidentally to the harvest of target species and the "other species" category. For a definition of the categories of species involved in the fishery, see Table 1 of this section.

(b) *Authorized fishery.* (1)(i) See 50 CFR Part 675, Subpart B, for procedures to determine total allowable catch (TAC), reserve, domestic annual harvest (DAH), and total allowable level of foreign fishing (TALFF).

(ii) *Categories of species.* Four categories of species are recognized for regulatory purposes and they are set forth in Table 1. The term "groundfish" means species in all categories except the "prohibited species" category.

TABLE I—CATEGORIES OF SPECIES INVOLVED IN THE BERING SEA AND ALEUTIAN ISLANDS FISHERY

Prohibited species [1]	Target species [2]	Other species [3]	Non-specified species [4]
Pacific halibut, Pacific herring, salmonids, king crab, Tanner crab, and other species for which there is no allocation, except 'non-specified species'.	Pollock, Cod, Other flat fishes, Atka Mackerel, Sablefish, Turbots, Squid, Pacific Ocean perch, other rockfish, Yellowfin sole.	Sculpins, Sharks, Skates, Eulachon, Smelts, Capelin, Octopus.	All species not included in previous categories

[1] Records must be maintained as required by §§ 611.9 and 611.90(e)(2).
[2] Records must be maintained.
[3] Records must be maintained of the aggregate catches.
[4] Must be treated in the same manner as "prohibited species" but no records are required.

(A) The term "prohibited species" means for purposes of this section: Pacific herring (*Clupea harengus pallasi*); salmonids (Salmonidae); Pacific halibut (*Hippoglossus stenolepis*); king crab (*Paralithodes* spp. and *Lithodes* spp.); and Tanner crab (*Chionoecetes* spp.). Except to the extent that their harvest is authorized under other applicable law, the catch or receipt of these species must be minimized and, if caught or received, they must be returned to the sea immediately in accordance with § 611.11 of this part. Records must be maintained as required by §§ 611.9, 611.90(e)(2), and this section. Any species of fish for which there is no foreign allocation must be treated in the same manner as "prohibited species" and records must be maintained of any catches or receipts of these species except for "nonspecified species". Catches or receipts of "non-specified species" must be treated in the same manner as "prohibited species" but records are not required of catches or receipts of these species.

(B) The term "other species" means: sculpins, sharks, skates; eulachon; smelts, capelin; and octopus.

(C) The term "nonspecified species" means all fish other than those specifically listed in paragraphs (b)(1)(ii) (A), (B), and (D) of this section.

(D) The term "target species" means pollock, Pacific cod, all flatfishes, Atka mackerel, sablefish, all rockfishes, and squids.

(iii) Directed fishing, with respect to any species, stock or other aggregation of fish, means fishing that is intended or can reasonably be expected to result in the catching, taking or harvesting of quantities of such fish that amount to 20 percent or more of the catch, take or harvest, or to 20 percent or more of the total amount of fish or fish products on board at any time. It will be a rebuttable presumption that, when any species, stock or other aggregation of fish comprises 20 percent or more of the catch, take or harvest, or 20 percent or more of the total amount of fish or fish products on board at any time, such fishing was directed fishing for such fish.

(2) For apportionment to TALFF of Reserves and surplus DAH, see 50 CFR Part 675, Subpart B.

(3) *Fishing permitted.* (i) The catching in the management area and retention of any groundfish for which a nation has an allocation is permitted, except as provided in this section.

(ii) Under the procedures of § 611.13(c), the Regional Director shall notify the foreign nation(s) involved and the designated representative for any affected fishing vessel of a closure prohibiting fishing with specified gear types for any species or species group. The closure may be for all or part of the management area.

(A) *Attainment of quota.* If the amount of "other species" or any target species, except sablefish, turbots, or Pacific cod, that is apportioned to the fishery will be reached, the Secretary shall prohibit foreign trawling in all or part of the management area until January 1. If the amount of sablefish, turbots, or Pacific cod that is apportioned to the fishery will be reached, the Secretary shall prohibit all foreign harvesting in all or part of the management area until January 1.

(B) *Total allowable level of foreign fishing.* If the total allowable level of foreign fishing (TALFF) for any species or species group except sablefish, turbots, or Pacific cod will be reached, the Regional Director shall prohibit fishing using trawl gear by foreign vessels. If the TALFF for sablefish, Pacific cod, or turbots will be reached, the Regional Director shall prohibit fishing for groundfish by foreign vessels.

(C) *Allocation of a nation.* If the allocation of a nation for any species or species group except sablefish, turbots, or Pacific cod will be reached, the Regional Director shall prohibit fishing using trawl gear by that nation. If the nation's allocation of sablefish, Pacific cod, or turbots will be reached, the Regional Director shall prohibit fishing for groundfish by all vessels of that nation.

(iii) On the effective date of a notice of closure from the Regional Director under the procedures of § 611.13(c), fishing by vessels of that nation is prohibited for the groundfish species or species groups, in the areas and during the periods stated in the notice. A notice of closure issued pursuant to paragraph (b)(3) of this section shall not apply to any receipt or processing by foreign vessels of United States-harvested fish which is authorized by permit issued by the Department of Commerce under the Act. Foreign receipt and processing of U.S. harvested fish may continue until specifically prohibited under the restrictions prescribed in the applicable permit.

(iv) A notification pursuant to paragraph (b)(3)(ii) of this section shall expire: (A) On the effective date of a notification issued pursuant to § 611.13(c) rescinding that previous notice; (B) when the time period stated in that notice expires; or (C) at midnight, Alaska Standard Time, on the following December 31, whichever is earlier.

(4) *Fishing prohibited.* Whether or not a nation receives a notice under paragraph (b)(3) of this section, fishing for groundfish by trawl vessels of a nation is prohibited when that nation's national allocation for any groundfish species is reached; and fishing for groundfish by all vessels of a nation is prohibited when that nation's national allocation for sablefish, Pacific cod, or turbots is reached.

(c) *Open and closed areas*—(1) *General.* Foreign fishing for groundfish may be conducted beyond 12 nautical miles from the baseline used to measure the territorial sea in the entire management area, except as prohibited in this paragraph. No foreign vessels may engage in fishing within 12 nautical miles of the baseline used to measure the territorial sea, unless authorized in this paragraph.

(2) *Trawling.* (i) Trawling by foreign vessels between 3 and 12 nautical miles from the baseline used to measure the territorial sea is allowed (A) at all times in the area bounded by 170°00′ W. and 172°00′ W. longitude south of the Aleutians and between 170°30′ W. and 172°00′ W. longitude north of the Aleutians, (B) on Petrel Bank from July 1 through December 31, and (C) from May 1 through December 31 in other areas west of 178°30′ W. longitude. Petrel Bank is bordered by straight lines connecting the following coordinates in the order listed:

Latitude	*Longitude*
52°51′ N.	178°30′ W.
52°51′ N.	179°00′ E.
51°15′ N.	179°00′ E.
51°15′ N.	178°30′ W.
52°51′ N.	178°30′ W.

(ii) Trawling is prohibited in the areas and during the periods which follow:

(A) At all times in the Bristol Bay "Pot Sanctuary" which is the area enclosed by straight lines from Cape Sarichef light at 54°36′ N. latitude, 164°55′42″ W. longitude; to 55°16′ N. latitude, 166°10′ W. longitude; to 56°20′ N. latitude, 163°00′ W. longitude; to 57°10′ N. latitude, 163°00′ W. longitude; to 58°10′ N. latitude, 160°00′ W. longitude; then due south along 160°00′ W. longitude to the Alaska Peninsula.

(B) At all times in the area between 172° W. longitude and 178°30′ W. longitude and south of a line connecting the following coordinates in the order listed: 53°14′ N. latitude, 172°00′ W. longitude; 52°13′ N. latitude, 176°00′ W. longitude; 52°00′ N. latitude 178°00′ W. longitude; and 52°00′ N. latitude, 178°30′ W. longitude.

(C) From December 1 through May 31 in the area bounded by straight lines connecting the following coordinates in the order listed: 54°36′ N. latitude, 164°55′42″ W. longitude (Cape Sarichef light); 52°48′ N. latitude, 170°00′ W. longitude; 55°30′ N. latitude, 170°00′ W. longitude; 55°30′ N. latitude, 166°47′ W. longitude, 56°00′ N. latitude, 167°45′ W. longitude; 56°00′ N. latitude, 166°00′ W. longitude; 56°30′ N. latitude, 166°00′ W. longitude; 56°30′ N. latitude, 163°00′ W. longitude; 56°20′ N. latitude, 163°00′ W. longitude; 55°16′ N. latitude, 166°10′ W. longitude, 54°36′ N. latitude, 164°55′42″ W. longitude (Cape Sarichef light).

(D) From January 1 through June 30 in the area known as Petrel Bank, described in paragraph (c)(2)(i) of this section.

(E) Prohibited species catch (PSC) limits—(*1*) *Salmon.* (*i*) During any fishing year, that portion of fishing area 51 lying between 55° N. and 57° N. latitude and 165° W. and 170° W. longitude and all of fishing area 52 may be closed for the remainder of the periods January 1 through March 31 and October 1 through December 31 to trawl vessels of any nation. This closure will occur when vessels of a nation have intercepted an amount of salmon which exceeds by 10 percent that nation's portion of the salmon prohibited species catch (PSC) established for the current fishing year (Table 2), or when vessels of that nation have intercepted an amount of salmon in any consecutive three-year period which exceeds the sum of that nation's portion of the salmon PSC established for those three years. Any salmon caught incidentally by vessels of that nation in the area which remains open will be applied against its portion of the following year's salmon PSC. Fishing areas 51 and 52 are described in Appendix C to Subpart A, paragraph C, and Figure 4.

TABLE 2—TARGET REDUCTION SCHEDULE OF SALMON PROHIBITED SPECIES CATCHES BASED ON THE AVERAGE 1977–80 FOREIGN TRAWL SALMON INCIDENTAL CATCH

Year	Total salmon [1]
Base No. 1977–80	80,000
Reduced catch levels:	
(1981)	69,893
(1982)	59,409
(1983)	48,925
(1984)	38,441
(1985)	27,957
(1986)	17,473

[1] Total salmon numbers are calculated on the assumption that 93% of the incidentally-caught salmon are chinook.

(*ii*) A nation's initial portion of the salmon PSC for a fishing year will be determined by multiplying the total salmon PSC for that year by the ratio of that nation's initial groundfish allocation to the total initial TALFF plus reserves for groundfish:

> Nation's initial salmon PSC equals total salmon PSC multiplied by nation's initial groundfish allocation divided by total initial groundfish TALFF and reserve.

At the beginning of the fishing year, a portion of the salmon PSC will not be distributed to nations, because groundfish reserves will not yet be apportioned and some of the initial TALFF may not yet be allocated. This remaining portion of the salmon PSC will be subsequently distributed to nations in proportion to increases in their groundfish allocations which result from the apportionment of the initial unallocated TALFF and groundfish reserves.

(2) *Pacific halibut, king crab, and Tanner crab.* (*i*) When during any fishing year the trawl vessels of a nation have taken incidentally that nation's current portion of the PSC for Pacific halibut, king crab, or Tanner crab, the entire management area will be closed to trawling by vessels of that nation for the remainder of that fishing year or until that nation's groundfish allocation is increased. Any increase in a nation's groundfish allocation will result in a corresponding increase in its current portion of PSC for Pacific halibut, king crab, and Tanner crab.

(*ii*) For any year (year i), the PSC_{ij}s for each of these species (species j) are based upon the incidental catch rates (R_{ij}) shown in Table 3:

> PSC_{ij} equals R_{ij} multiplilied by the total groundfish TALFF. Using this formula, the PSC for Pacific halibut, king crab, and Tanner crab will increase in proportion to increases in the total TALFF which result from the apportionment of groundfish reserves or surplus DAH to TALFF under paragraph (b)(2) of this section.

(*iii*) A nation's current portion of the PSC_{ij}s for Pacific halibut, king crab, and Tanner crab, at any time during the fishing year, is determined by multiplying that nation's current groundfish allocation by R_{ij}:

> Nation's PSC_{ij} equals R_{ij} multiplied by a nation's groundfish allocation.

TABLE 3—Incidental Catch Rate Reductions for Pacific Halibut, King Crab, and Tanner Crab, Based on the Average 1977–80 Foreign Trawl Groundfish and Prohibited Species Catches

Year	Halibut [1]	King Crab [2]	Tanner Crab [2]
BASE CATCH RATES			
1977–80	3,182	916,804	16,003,329
Average Base	[3] 1,301,250 R=0.00245	[4] 1,301,250 R=0.70456	[5] 1,301,250 R=12.29843
RATE REDUCTION SCHEDULE, R AND R AS PERCENTAGE OF BASE R (Percent)			
(1981)			
(1982)	R=.00220 90%	R=.66933 95%	R=11.6840 95%
(1983)	R=.00196 80%	R=.63410 90%	R=11.0686 90%
(1984)	R=.00171 70%	R=.59887 85%	R=10.4537 85%
(1985)	R=.00147 60%	R=.56365 80%	R=9.8387 80%
(1986)	R=.00122 50%	R=.52842 75%	R=9.2238 75%

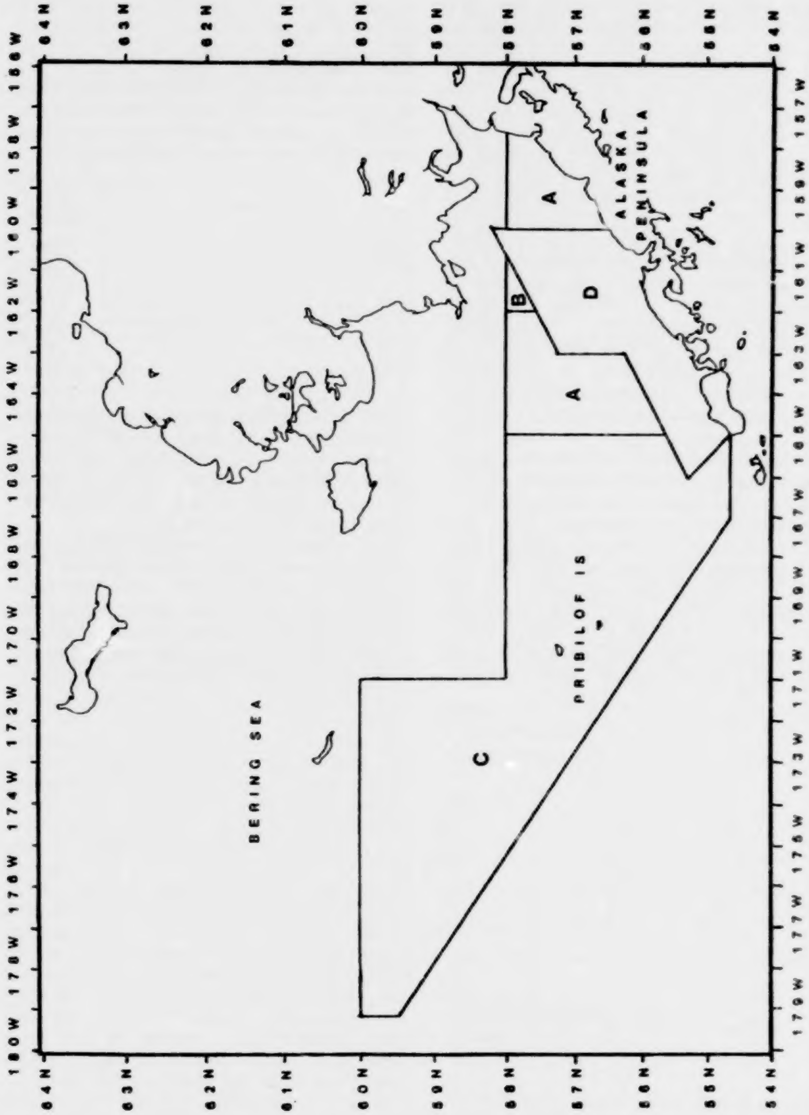
[1] Metric tons per metric ton of groundfish.
[2] Number of individuals per metric ton of groundfish.
[3] Base R=0.00245.
[4] Base R=0.70456.
[5] Base R=12.29843.

(*iv*) When, during the fishing year, the trawl vessels of a foreign nation conducting directed fishing for yellowfin sole and "other flatfish" in the combined Zones 1 and 2 (areas A and C in Figure 1) catch that nation's share of the PSC limit of 64,000 *C. bairdi* Tanner crabs, the Regional Director will publish a notice in the Federal Register prohibiting trawling by vessels of that nation for yellowfin sole and "other flatfish" in both of these areas for the remainder of the fishing year. A nation's share of this PSC limit will be calculated by multiplying 64,000 by a percent that is equivalent to that nation's portion of the total TALFF of yellowfin sole and "other flatfish." At the beginning of the fishing year, a portion of this PSC limit will not be distributed to nations, because some of the total TALFF of yellowfin sole and "other flatfish" may not yet be allocated. The undistributed portion of this PSC limit will be subsequently distributed to nations in proportion to increases in their yellowfin sole and "other flatfish" allocations. Apportionments of this PSC limit notwithstanding, the Regional Director will publish a notice in the Federal Register prohibiting all foreign trawling for yellowfin sole and "other flatfish" in Zones 1 and 2 when such trawling catches the PSC limit of 64,000 *C. bairdi* Tanner crabs in the combined zones. For this purpose, Zone 1 is defined as that part of the management area south of 58° N. latitude and east of 165° W. longitude exclusive of other closed areas specified under this part (area A in Figure 1), and Zone 2 is defined as that part of the management area bounded by straight lines connecting the following coordinates in the order listed and exclusive of other closed areas specified under this part (area C in Figure 1):

North latitude	West longitude
54°30′	165°00′
58°00′	165°00′
58°00′	171°00′
60°00′	171°00′
60°00′	179°20′
59°25′	179°20′
54°30′	167°00′
54°30′	165°00′

(F) At all times in the area enclosed by straight lines connecting the following coordinates: 57°30′ N. lat., 162°00′ W. long.; 58°00′ N. lat., 162°00′ W. long.; 58°00′ N. lat., 160°30′30″ W. long. (area B in Figure 1).

(G) When the domestic fishery for yellowfin sole and "other flatfish" is prohibited under § 675.21(b) of this chapter, the directed fishery for yellowfin sole and "other flatfish" is prohibited in the same area specified in § 675.21(b) (Area A, Figure 1).


180W
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62N
61N
60N
59N
58N
57N
56N
55N
54N
BERING SEA
PRIBILOF IS
ALASKA PENINSULA
A
B
C
D
A

FIGURE 1

Captions for Figure 1

A. Zone 1 area defined at § 611.93(c)(2)(ii)(E)(2)(iv)

B. Closed area defined at § 611.93(c)(2)(ii)(F)

C. Zone 2 area defined at § 611.93(c)(2)(ii)(E)(2)(iv)

D. Bristol Bay "pot sanctuary" defined at § 611.93(c)(2)(ii)(A)

(3) *Longlining.* (i) Longlining by foreign vessels between 3 and 12 nautical miles from the baseline used to measure the territorial sea is allowed west of 170°00′ W. longitude.

(ii) When U.S. observer information or other reliable reported statistics indicate that foreign longline vessels have intercepted 105 mt of Pacific halibut in the entire management area during the 12-month period June 1 through May 31, the Regional Director shall prohibit further longlining by foreign vessels from that day forward or from December 1, whichever comes later, through May 31, in waters less than 500 meters deep in the area designed under paragraph (c)(2)(ii)(C) of this section. Notice of this prohibition will be given according to procedures specified in § 611.15(c).

(4) *Receipts of fish at sea.* Foreign fishing vessels holding permits to receive U.S.-harvested fish may receive those fish in the management area between 3 and 12 nautical miles from the baseline from which the United States territorial sea is measured. Receiving foreign-harvested fish in the 3 to 12 mile area is prohibited, except: (i) When the foreign vessel delivering the foreign-caught fish is authorized to harvest fish in the 3 to 12 mile area, or (ii) in the support operations areas designated in § 611.90(c)(2).

(d) *Additional reporting requirements*—(1) *Vessel reporting.* During the period from September 1 through April 30, and for the purposes of the requirements of 50 CFR 611.4(c) only, the area bounded by the following coordinates is a "fishing area" for all foreign trawl vessels fishing for groundfish under this § 611.93: 58° N. latitude, 175° W. longitude; 58° N. latitude, 172° W. longitude, 59°30′ N. latitude, 172° W. longitude, 59°30′ N. latitude, 175° W. longitude. (See Appendix C to Subpart A, Figure 4).

(2) *Reports and recordkeeping.* (i) In addition to the requirements of §§ 611.4 and 611.9, the operator of each foreign fishing vessel fishing for groundfish in the management area and each nation whose vessels fish for groundfish in the management area shall also comply with all the requirements of § 611.90(e)(2) for the prohibited species herring (code 209), even though discarded, and for non-specified species which are retained, by weight of fish to the nearest 1/10 (tenth) of a metric ton.

(ii)(A) During the period September 1 through April 30, and in addition to the requirements of §§ 611.4 and 611.9, each foreign nation shall submit, through the designated representative, a weekly report stating any catch of herring by trawl vessels in the area described in § 611.90(d)(1).

(B) The weekly report shall contain the following information:

(*1*) Name of vessel;

(*2*) Permit number;

(*3*) Effort in hours trawled, by each weekly reporting period, by vessel, by ½° (latitude) × 1° (longitude) of area fished;

(*4*) Catch of herring (code 209) to the nearest 1/10 (one-tenth) of a metric ton, by vessel, by each weekly reporting period, by ½° (latitude) × 1° (longitude) of area fished.

(C) The weekly report shall be received from the designated representative by the Director, Alaska Region (National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99801, Telex No. 009945-377), at the times specified in § 611.4(g), and in the format specified by the Director, Alaska Region.

(3) *Annual report.* Each nation whose vessels fish for groundfish in the management area shall report, by May 30 of the following year, annual catch and effort statistics as follows:

(i) Effort in hours trawled, number of longline units (300 fathoms of longline or groundline per unit) and number of hooks per unit, number of pots, duration of soaking time for longlines and pots, and number of days fished, by vessel class, by gear type, by month, by ½° latitude and 1° longitude statistical area; and

(ii) Catch in metric tons, by vessel class, by gear type, by month, by ½° latitude and 1° longitude statistical area, by the following species categories: yellowfin sole; rock sole; flathead sole; arrowtooth flounder; greenland halibut; other flounders; Pacific Ocean perch; Pacific cod, sablefish (blackcod); walleye (Alaska) pollock; Atka mackerel; any other species taken in excess of 1,000 metric tons; "other species," and retained "non-specified species."

(e) *Inseason management decisions*—(1) *Field orders.* (i) Any field order issued by the Secretary under this section will include the following:

(A) The Secretary's findings required by paragraph (e)(2) of this section;

(B) A description and order of the modification of time and area limitations, based upon the Secretary's findings; and

(C) The effective dates of the modification.

(ii) No field order issued under this section may take effect until:

(A) It has been filed for publication with the FEDERAL REGISTER;

(B) The foreign nations concerned and the designated representatives for affected foreign fishing vessels are notified. If practicable, notification shall be given at least 48 hours before the field order is to be effective; and

(C) The public has been offered the opportunity to comment upon the Secretary's proposed findings and order of modification for a period of at least thirty (30) days, unless the Secretary finds that such prior opportunity for public comment would adversely affect the conservation and management of groundfish or unallocated species.

(iii) If the Secretary finds that prior opportunity for public comment on the proposed findings and order of modification would adversely affect the conservation and management of groundfish or unallocated species, he will receive public comments on the field order for thirty (30 days) after its effective date, making available to the public during business hours the aggregate data on which it was based. After considering the comments received, the Secretary will determine whether the field order should be changed.

(iv) Any modification prescribed by a field order issued under this section will remain in effect in accordance with the terms of the field order, or of any subsequent field order which may be issued under this section.

(2) *Prohibited species catch (PSC) limits.* (i) The PSCs or incidental catch rates for salmon, Pacific halibut, king crab, and Tanner crab established in paragraph (c)(2)(ii)(E) of this section will be reviewed annually by the Secretary, in consultation with the North Pacific Fishery Management Council, in order to respond to changes in relevant circumstances, including the following:

(A) Changes in the stock condition and abundance of prohibited species;

(B) Changes in the stock condition and abundance of target groundfish species, except that such changes will not be considered relevant to the salmon PSC except in the course of a full and complete review of the salmon PSC reduction program to be conducted during 1983;

(C) Changes in the degree of socio-economic impact of prohibited species catches on the domestic fisheries dependent on those species; and

(D) Changes in the impact of PSCs on the opportunity of foreign fisheries to take their groundfish allocations.

(ii) Based upon the most recent scientific and technical information available, and prior to the beginning of the fishing year, the Secretary may issue a field order under paragraph (e)(1) of this section to adjust the PSC's or incidental catch rates for salmon, Pacific halibut, king crab, and Tanner crab after consultation with the North Pacific Fishery Management Council under paragraph (e)(2)(i) of this section and after he has considered all of the following in descending order of priority and issued relevant findings:

(A) The need to protect prohibited species for biological and other conservation reasons;

(B) The impact of PSC regulations on the domestic fisheries dependent on prohibited species;

(C) The impact of the PSC regulations on development and operation of domestic groundfish fisheries; and

(D) The impact of PSC regulations on the foreign groundfish fisheries.

(iii) The Regional Director will notify a nation when its portion of the PSC for salmon, Pacific halibut, king crab, or Tanner crab, as established under paragraph (c)(2)(ii)(E) of this section, is approached, so that voluntary efforts by vessels of that nation may reduce the incidental catch of these species. When a nation's portion of the PSC for salmon, Pacific halibut, king crab, or Tanner crab is reached, the Regional Director shall notify the foreign nation and the designated representatives for affected foreign fishing vessels of the resulting time-area restriction under paragraph (c)(2)(ii)(E) of this section. If practicable, such notification will be given at least 48 hours prior to the restriction. After a nation has caught its portion of the PSC for Pacific halibut, king crab or Tanner crab, the Regional Director may by field order allow a selected portion of that nation's fishing fleet to continue fishing under specified conditions until that nation's groundfish allocation is reached, although any additional incidental catch of prohibited species by vessels which have been allowed to continue fishing will be considered when establishing future PSC limits for that nation. The Regional Director will take into account the following considerations when making such allowance and will issue relevant findings.

(A) The risk of biological harm to prohibited species stocks and of socioeconomic harm to authorized prohibited species users posed by continued trawling by the selected elements;

(B) The extent to which the selected elements have avoided incidental prohibited species catches up to that point in the fishing year;

(C) The confidence of the Regional Director in the accuracy of the estimates of prohibited species catch by the selected elements up to that point in the fishing year;

(D) Whether observer coverage of the selected elements is sufficient to assure adherence to the prescribed conditions and to alert the Regional Director to increases in the elements' prohibited species catch; and

(E) The enforcement record of owners and operators of vessels included in the selected elements and the confidence of the Regional Director that adherence to prescribed conditions can be assured in light of available enforcement resources.

[46 FR 63304, Dec. 31, 1981]

Editorial Note: For Federal Register citations affecting § 611.93, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 611.94 Snail fishery.

(a) *Purpose.* This section regulates foreign fishing for snails (all species of the genera *Neptunea, Fusitriton, Buccinum, Beringius, Volutopsius, Clinopegma, Plicifusus,* and *Pyrulofusus*) in the Bering Sea.

(b) *Authorized fishery*—(1) *Allocations.* Foreign vessels may engage in fishing only in accordance with applicable national allocations.

(2) *TALFF, DAH, DAP, JVP, Reserve.* The annual total allowable level of foreign fishing (TALFF), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and reserve for snails for each calendar year are published in the Federal Register. Current amounts are also available from the Regional Director.

(3) *Closures.* The taking of snails for which nation has an allocation is permitted provided that the fishery has not been closed pursuant to § 611.15.

(c) *Area, gear, and other restrictions.* No foreign fishing vessel may:

(1) Fish for snails east of 164° W. long., or within twelve miles of the baseline used to measure the territorial sea;

(2) Fish for snails using gear other than pots; or

(3) Retain in the snail fishery any species other than snails.

(d) *Additional statistical report.* Each nation whose vessels engage in this fishery shall report, by May 30 of the following year, annual catch and effort statistics as follows: *Effort* in number of pots hauled and hours pots soaked, by month, by ½° (lat.) x 1° (long.) statistical area; *Catch* in metric tons of edible meat, by month, by ½° (lat.) x 1° (long.) statistical area.

[43 FR 59293, Dec. 19, 1978, as amended at 47 FR 44266, Oct. 7, 1982; 48 FR 34762, Aug. 1, 1983]

PART 619—PREEMPTION OF STATE AUTHORITY UNDER SECTION 306(b)

Sec.

619.1 Purpose and scope.
619.2 General policy.
619.3 Definitions.
619.4 Factual findings for Federal preemption.
619.5 Commencement of proceedings.
619.6 Rules pertaining to the hearing.
619.7 Secretary's decision.
619.8 Application for reinstatement of State authority.

AUTHORITY: 5 U.S.C. 552(a); 16 U.S.C. 1801 *et seq.*

SOURCE: 51 FR 11925, Apr. 8, 1986, unless otherwise noted.

§ 619.1 Purpose and scope.

The rules in this part, together with the requirements of 5 U.S.C. 554 through 557, prescribe procedures for the conduct of preemption hearings under section 306(b) of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1856(b). These rules are issued by the Secretary of Commerce under section 305(g) of the Act and the requirement of 5 U.S.C. 552(a)(1)(C).

§ 619.2 General policy.

It is the policy of the Secretary of Commerce that preemption proceedings will be conducted expeditiously. The administrative law judge and counsel or other representative for each party are encouraged to make every effort at each stage of the proceedings to avoid delay.

§ 619.3 Definitions.

As used in this part, unless the context clearly requires otherwise:

Act means the Magnuson Fishery Conservation and Management Act, as amended, (13 U.S.C. 1801 *et seq.*).

Administrator means the Administrator, National Oceanic and Atmospheric Administration (NOAA), or any person to whom the Administrator's authority has been delegated.

Council means any appropriate Regional Fishery Management Council established under Title III of the Act.

Party to the proceeding means the Administrator and each State served with a notice of proposed preemption (as represented by such State's Attorney General or other official representative).

Predominately means, with respect to fishing in a fishery, that more fishing on a stock or stocks of fish covered by the fishery management plan occurs, or would occur in the absence of regulations, within or beyond the EEZ than occurs in the aggregate within the boundaries of all States off the coasts of which the fishery is conducted.

Secretary means the Secretary of Commerce.

State means any State or States, as defined in section 3(21) of the Act, with respect to which action is taken under this part.

State action or omission that affects a fishery covered by a fishery management plan includes a State's statutes, conservation and management regulations, judicial decisions, policies, and enforcement practices, or the lack thereof.

Substantially (affects) means, with respect to whether a State's action or omission will substantially affect the carrying out of a fishery management plan (FMP) for a fishery, that those effects are important or material, or considerable in degree. The effects of a State's action or omission for purposes of this definition include effects upon:

(1) The achievement of the FMP's goals or objectives for the fishery;

(2) The achievement of optimum yield from the fishery on a continuing basis;

(3) The attainment of the national standards for fishery conservation and management (as set forth in section 301(a) of the Act) and compliance with other applicable law; or

(4) The enforcement of regulations implementing the FMP.

[51 FR 11925, Apr. 8, 1986, as amended at 53 FR 24653, June 29, 1988]

§ 619.4 Factual findings for Federal preemption.

(a) The two factual findings for Federal preemption of State management authority over a fishery are:

(1) The fishing in a fishery, which is covered by a fishery management plan implemented under the Act, is engaged in predominately within the EEZ and beyond such zone; and

(2) A State has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such fishery management plan.

(b) Whether fishing is engaged in "predominately" within or beyond the EEZ will be determined after consideration of relevant factors, including but not limited to, the catch (based on numbers, value, or weight of fish caught, or other relevant factors) or fishing effort during the appropriate period, and in light of historical patterns of the distribution of catch or fishing effort for such stock or stocks of fish.

(c) Whether relevant effects are substantial will be determined after consideration of the magnitude of such actual or potential effects. Relevant to this determination are various factors, including but not limited to, the proportion of the fishery (stock or stocks of fish and fishing for such stocks) that is subject to the effects of a particular State's action or omission, the characteristics and status (including migratory patterns and biological condition) of the stock or stocks of fish in the fishery, and the similarity or dissimilarity between the goals, objectives, or policies of the State's action or omission and the management goals or objectives specified in the FMP for the fishery or between the State and Federal conservation and management measures of the fishery.

[51 FR 11925, Apr. 8, 1986, as amended at 53 FR 24653, June 29, 1988]

§ 619.5 Commencement of proceedings.

(a) *Notice of proposed preemption.* (1) If a proceeding under this part is deemed necessary, the Administrator must issue a notice of proposed preemption to the Attorney General of the State or States concerned. The notice will contain:

(i) A recital of the legal authority and jurisdiction for instituting the proceeding;

(ii) A concise statement of the § 619.4 factual findings for Federal preemption upon which the notice is based; and,

(iii) The time, place, and date of the hearing.

(2) The notice of proposed preemption will also be published in the FEDERAL REGISTER. This notice may be combined with any notice of proposed rulemaking published under paragraph (d)(1) of this section.

(b) *Response.* The State will have the opportunity to respond in writing to the notice of proposed preemption.

(c) *Amendment.* The Administrator may, at any time prior to the Secretary's decision, withdraw the notice of proposed preemption. Upon motion of either party before the record is closed, the administrative law judge may amend the notice of proposed preemption.

(d) *Proposed regulations.* (1) *In general.* If additional regulations are required to govern fishing within the boundaries of a State, the Administrator may publish proposed regulations in the FEDERAL REGISTER concurrently with issuing the notice indicated in paragraph (a) of this section.

(2) *Emergency actions.* Nothing in this section will prevent the Secretary from taking emergency action under section 305(e) of the Act.

§ 619.6 Rules pertaining to the hearing.

(a) The civil procedure rules of the National Oceanic and Atmospheric Administration currently set forth in 15 CFR Part 904, Subpart C (or as subsequently amended), apply to the proceeding after its commencement by service of notice (pursuant to § 619.5) and prior to the Secretary's decision (§ 619.7), *except* that the following sections will not apply:

(1) 15 CFR 904.201 (Definitions)

(2) 15 CFR 904.206(a)(1) (Duties and powers of Judge); and

(3) 15 CFR 904.272 (Administrative review of decision).

(b) *Additional duties and powers of Judge*—(1) *Time periods.* The administrative law judge is authorized to modify all time periods pertaining to the course of the hearing (under §§ 619.5 and 619.6) to expedite the proceedings, upon application and appropriate showing of need or emergency circumstances by a party.

(2) *Intervention.* Intervention by persons not parties is not allowed.

§ 619.7 Secretary's decision.

(a) The Secretary will, on the basis of the hearing record the administrative law judge's recommended decision:

(1) Accept or reject any of the findings or conclusions of the administrative law judge and decide whether the factual findings exist for Federal preemption of a State's authority within its boundaries (other than in its internal waters) with respect to the fishery in question;

(2) Reserve decision on the merits or withdraw the notice of proposed preemption; or

(3) Remand the case to the administrative law judge for further proceedings as may be appropriate, along with a statement of reasons for the remand.

(b) *Notification.* (1) If the factual findings for Federal preemption are determined to exist, the Secretary will notify in writing the Attorney General of that State and the appropriate Council(s) of the preemption of that State's authority. The Secretary will also direct the Administrator to promulgate appropriate regulations proposed under § 619.5(d) and otherwise to begin regulating the fishery within the State's boundaries (other than in its internal waters).

(2) If the factual findings for Federal preemption are determined not to exist, the Secretary will notify, in writing, the Attorney General of the State and the appropriate Council(s) of that determination. The Secretary will also direct the Administrator to issue a notice withdrawing any regulations proposed under § 619.5(d).

§ 619.8 Application for reinstatement of State authority.

(a) *Application or notice.* (1) At any time after the promulgation of regulations under § 619.7(b)(1) to regulate a fishery within a State's boundaries, the affected State may apply to the Secretary for reinstatement of State authority. The Secretary may also serve upon such State a notice of intent to terminate such Federal regulation. A State's application must include a clear and concise statement of (i) the action taken by the State to correct the action or omission found to have substantially and adversely affected the carrying out of the fishery management plan, or (ii) any changed circumstances which affect the relationship of the State's action or omission to take action to the carrying out of the fishery management plan (including any amendment to such plan); and (iii) any laws, regulations, or other materials which the State believes support the application.

(2) Any such application received by the Secretary or notice issued to the State will be published in the FEDERAL REGISTER.

(b) *Informal response.* The Secretary has sole discretion to accept or reject the application or response. If the Secretary accepts the application or rejects any responses and finds that the reasons for regulation of the fishery within the boundaries of the State no longer prevail, the Secretary will promptly terminate such regulation and publish in the FEDERAL REGISTER any regulatory amendments necessary to accomplish that end.

(c) *Hearing.* The Secretary has sole discretion to direct the Administrator to schedule hearings for the receipt of evidence by an administrative law judge. Hearings before the administrative law judge to receive such evidence will be conducted in accordance with § 619.6. Upon conclusion of such hearings, the administrative law judge will certify the record and a recommended decision to the Secretary. If the Secretary, upon consideration of the State's application or any response to the notice published under § 619.8(a)(2), the hearing record, the recommended decision, and any other relevant materials finds that the reasons for regulation of the fishery within the boundaries of the State no longer prevail, the Secretary will promptly terminate such regulation and publish in the

FEDERAL REGISTER any regulatory amendments necessary to accomplish that end.

PART 620—GENERAL PROVISIONS FOR DOMESTIC FISHERIES

Sec.

620.1 Purpose.
620.2 Definitions.
620.3 Relation to other laws.
620.4 Permits.
620.5 Recordkeeping and reporting.
620.6 Vessel and gear identification.
620.7 General prohibitions.
620.8 Facilitation of enforcement.
620.9 Penalties.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 53 FR 24653, June 29, 1988, unless otherwise noted.

§ 620.1 Purpose.

The purpose of this part is to collect and display the general provisions common to all domestic fishing regulations appearing at Parts 630 through 699 of this chapter.

§ 620.2 Definitions.

In addition to the definitions in the Magnuson Act, the terms used in this part and in Parts 630 through 699 of this chapter have the following meanings:

Administrator means the Administrator of NOAA (Under Secretary of Commerce for Oceans and Atmosphere) or a designee.

Area of custody means any vessel, building, vehicle, live car, pound, pier, or dock facility where fish might be found.

Assistant Administrator means the Assistant Administrator for Fisheries, NOAA, or a designee.

Authorized officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of NMFS;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Catch, take, or *harvest* includes, but is not limited to, any activity which results in killing any fish or bringing any live fish on board a vessel.

Dealer means the person who first receives fish by way of purchase, barter, or trade.

Exclusive economic zone (EEZ) means the zone established by Presidential Proclamation 5030, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fish means any finfish, mollusk, crustacean, or parts thereof, and all other forms of marine animal and plant life other than marine mammals, birds, and highly migratory species of tuna.

Fishery resource means any fish, any stock of fish, any species of fish, and any habitat of fish.

Fishing, or *to fish,* means any activity, other than scientific research conducted by a scientific research vessel, which involves:

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for:

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, as amended.

NMFS means the National Marine Fisheries Service, NOAA.

NOAA means the National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

Official number means the documentation number issued by the U.S. Coast Guard or the certificate number issued by a State or by the U.S. Coast Guard for an undocumented vessel.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by a person described in paragraph (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Retain, retain aboard, or *retain on board* means to fail to return fish to the sea after a reasonable opportunity to sort the catch.

Secretary means the Secretary of Commerce, or a designee.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.

U.S. fish processors means facilities located within the United States for, and vessels of the United States used or equipped for, the processing of fish for commercial use or consumption.

U.S.-harvested fish means fish caught, taken or harvested by vessels of the United States within any fishery regulated under the Magnuson Act.

Vessel of the United States means:

(a) Any vessel documented under Chapter 121 of Title 46, United States Code;

(b) Any vessel numbered under Chapter 123 of Title 46, United States Code, and measuring less than 5 net tons;

(c) Any vessel numbered under Chapter 123 of Title 46, United States Code, and used exclusively for pleasure; and

(d) Any vessel not equipped with propulsion machinery of any kind and used exclusively for pleasure.

§ 620.3 Relation to other laws.

(a) *General.* Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities. Vessel operators may wish to refer to U.S. Coast Guard regulations at U.S.C. Titles 33—Navigation and Navigable Waters and 46—Shipping, to 15 CFR Part 904 Subpart D—Permit Sanctions and Denials, and to U.S.C. Title 43—Public Lands (in regard to marine sanctuaries).

(b) *State responsibilities.* Certain responsibilities relating to data collection and enforcement may be performed by authorized State personnel under a State/Federal agreement for data collection and a tripartite agreement among the State, the U.S. Coast Guard, and the Secretary for enforcement.

(c) *Submarine cables.* Fishing vessel operators must exercise due care in the conduct of fishing activities near submarine cables. Damage to the submarine cables resulting from intentional acts or from the failure to exercise due care in the conduct of fishing operations subjects the fishing vessel operator to the criminal penalties prescribed by the Submarine Cable Act (47 U.S.C. 21) which implements the International Convention for the Protecion of Submarine Cables. Fishing vessel operators also should be aware that the Submarine Cable Act prohibits fishing operations at a distance of less than one nautical mile from a vessel engaged in laying or repairing a submarine cable; or at a distance of less than one-quarter nautical mile from a buoy or buoys intended to mark the position of a cable when being laid or when out of order or broken.

(d) *Marine mammals.* Regulations governing permits and certificates of inclusion for the taking of marine mammals are set forth at Part 216 of this title.

(e) *Halibut fishing.* Fishing for halibut is governed by regulations of the International Pacific Halibut Commission set forth at Part 301 of this title.

(f) *Marine sanctuaries.* All fishing activity, regardless of species sought, is prohibited under 15 CFR Part 924 in the U.S.S. Monitor Marine Sanctuary, which is located approximately 15 miles southwest of Cape Hatteras off the coast of North Carolina.

§ 620.4 Permits.

Regulations pertaining to permits required for certain fisheries are set forth in the parts governing those fisheries.

§ 620.5 Recordkeeping and reporting.

Regulations pertaining to records and reports required for certain fisheries are set forth in the parts governing those fisheries.

§ 620.6 Vessel and gear identification.

Regulations pertaining to special vessel and gear markings required for certain fisheries are set forth in the parts governing those fisheries.

§ 620.7 General prohibitions.

It is unlawful for any person to do any of the following:

(a) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, import, or export, any fish or parts thereof taken or retained in violation of the Magnuson Act or any regulation or permit issued under the Magnuson Act.

(b) Transfer or attempt to transfer, directly or indirectly, any U.S.-harvested fish to any foreign fishing vessel, while such vessel is in the EEZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Magnuson Act which authorizes the receipt by such vessel of U.S.-harvested fish.

(c) Fail to comply immediately with enforcement and boarding procedures specified in § 620.8 of this part.

(d) Refuse to allow an authorized officer to board a fishing vessel or to enter areas of custody for purposes of conducting any search, inspection, or seizure in connection with the enforcement of the Magnuson Act.

(e) Dispose of fish or parts thereof or other matter in any manner, after any communication or signal from an authorized officer, or after the approach by an authorized officer or an enforcement vessel.

(f) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search, inspection, or seizure in connection with enforcement of the Magnuson Act.

(g) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person has committed any act prohibited by the Magnuson Act.

(h) Resist a lawful arrest for any act prohibited under the Magnuson Act.

§ 620.8 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to Parts 630 through 699 of this chapter must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this chapter.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) VHF-FM radiotelephone is the preferred method for communicating between vessels. If the size of the

vessel and the wind, sea, and visibility conditions allow, a loudhailer may be used instead of the radio. Hand signals, placards, high frequency radiotelephone, or voice may be employed by an authorized officer, and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop. In the International Code of Signals, "L" (.-..)[1] means "you should stop your vessel instantly."

(4) Failure of a vessel's operator promptly to stop the vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF-FM, if so equpped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer or observer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.-.-) is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.-. -.— -.-. -.—) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... —.- ...—) means "you should stop or heave to; I am going to board you."

[53 FR 24653, June 29, 1988; 53 FR 27798, July 22, 1988]

§ 620.9 Penalties.

Any person committing or fishing vessel used in the commission of a violation of the Magnuson Act or any regulation issued under the Magnuson Act, is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Magnuson Act, to Part 621 of this chapter, to 15 CFR Part 904 (Civil Procedures), and to other applicable law.

PART 621—CIVIL PROCEDURES

Subpart A—Introduction

Sec.

621.1 Purpose and scope.
621.2 Enforcement policy.
621.3 Definitions.

AUTHORITY: 16 U.S.C. 1801-1882.

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[1] Period (.-..) means a short flash of light; dash (—) means a long flash of light.

Subpart A—Introduction

§ 621.1 Purpose and scope.

(a) Section 308 of the Magnuson Act authorizes the Secretary to assess a civil penalty, in an amount not to exceed $25,000, for each violation against any person found to have committed an act prohibited by section 307. Each day of a continuing violation is considered a separate offense. The Administrator has been delegated the authority to assess these administrative money penalties.

(b) Section 204(b)(12) of the Magnuson Act details the circumstances under which the Administrator is to revoke, suspend, or modify certain foreign fishing vessel permits. Regulations implementing specific fishery management plans contain provisions for permit sanctions in respect both to foreign and domestic fishing vessels.

(c) Section 310(c) of the Magnuson Act makes provisions of the customs laws relating to, among other things, the remission or mitigation of forfeitures and the compromise of claims, applicable to forfeitures of fishing vessels and fish alleged to be authorized under the Magnuson Act. The Department of Commerce is authorized to entertain petitions for administrative settlement of property seizures made under the Magnuson Act which would otherwise proceed to judicial forfeiture.

[45 FR 18932, Mar. 24, 1980, as amended at 50 FR 12785, Apr. 1, 1985; 53 FR 24655, June 29, 1988]

§ 621.2 Enforcement policy.

(a) The Magnuson Act provides four basic enforcement remedies for violations, in ascending order of severity as follows:

(1) Issuance of a citation (a type of warning), usually at the scene of the offense (see 15 CFR Part 904 Subpart E);

(2) Assessment by the Administrator of a civil money penalty;

(3) For certain violations, judicial forfeiture action against the vessel and its catch; and

(4) Criminal prosecution of the owner or operator for some offenses. It shall be the policy of the Agency to enforce vigorously and equitably the provisions of the Magnuson Act by utilizing that form or combination of authorized remedies best suited in a particular case to this end.

(b) Processing a case under one remedial form usually means that other remedies are inappropriate in that case. However, further investigation or later review may indicate the case to be either more or less serious than initially considered, or may otherwise reveal that the penalty first pursued is inadequate to serve the purposes of the Magnuson Act. Under such circumstances, the Agency may pursue other remedies either in lieu of or in addition to the action originally taken. Forfeiture of the illegal catch does not fall within this general rule and is considered in most cases as only the initial step in remedying a violation by removing the ill-gotten gains of the offense (see paragraph (d) of this section).

(c) If a fishing vessel for which a permit has been issued under the Magnuson Act is used in the commission of an offense prohibited by section 307 of the Magnuson Act, the Agency may impose permit sanctions whether or not civil or criminal action has been undertaken against the vessel or its owner or operator. In some cases, the Magnuson Act requires permit sanctions following the assessment of a civil penalty or the imposition of a criminal fine. In sum, the Magnuson Act treats sanctions against the fishing vessel permit to be the carrying out of a purpose separate from that accomplished by civil and criminal penalties against the vessel or its owner or operator.

[45 FR 18932, Mar. 24, 1980, as amended at 50 FR 12785, Apr. 1, 1985; 50 FR 36435, Sept. 6, 1985; 53 FR 24655, June 29, 1988]

§ 621.3 Definitions.

Terms used in this part have the meanings prescribed in section 3 of the Magnuson Act and as set forth in § 620.2 of this chapter.

[53 FR 24655, June 29, 1988]

PART 630—ATLANTIC SWORDFISH FISHERY

Subpart A—General Provisions

Sec.
630.1 Purpose and scope.
630.2 Definitions.
630.3 Relation to other laws.
630.4 Vessel permits.
630.5 Recordkeeping and reporting.
630.6 Vessel identification.
630.7 Prohibitions.
630.8 Facilitation of enforcement.
630.9 Penalties.

Subpart B—Management Measures

630.20 Fishing year.
630.21 [Reserved]
630.22 Harvest limitations.
630.23 [Reserved]
630.24 Specifically authorized activities.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 50 FR 33956, Aug. 22, 1985, unless otherwise noted.

Subpart A—General Provisions

§ 630.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Atlantic Swordfish Fishery prepared by the South Atlantic, New England, Mid-Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils under the Magnuson Act.

(b) This part regulates fishing for swordfish by persons fishing on vessels of the United States shoreward of the seaward boundary of the EEZ in the Atlantic, Gulf of Mexico, and Caribbean.

(c) Regulations governing fishing by vessels other than vessels of the United States are published at 50 CFR Part 611, Subpart A and §§ 611.60 and 611.61.

[50 FR 33956, Aug. 22, 1985, as amended at 53 FR 24660, June 29, 1988]

§ 630.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Carcass or *dressed* means a fish that has been gutted and the head and fins have been removed.

Center Director means the Center Director, Southeast Fisheries Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, Florida 33149; Telephone 305-361-5761, or a designee.

Commercial fisherman means a person who sells, trades, or barters any part of his or her catch of fish.

Councils means the following Regional Fishery Management Councils:

(a) South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, South Carolina 29407-4699, telephone, 803-571-4366;

(b) New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, Massachusetts 01906;

(c) Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, North and New Streets, Dover, Delaware 19901;

(d) Caribbean Fishery Management Council, Suite 1108 Banco de Ponce Building, Hato Rey, Puerto Rico 00918; and

(e) Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609.

Gangion means one of the lines that bear hooks and which is attached at intervals along the main line of a longline. (Synonymous with leader.)

Handline gear means a fishing line set and pulled by hand that remains attached to a fishing vessel during fishing.

High flyer means a vertical pole that projects above the water attached to a longline that serves to mark its location.

Regional Director means the Director, Southeast Region, NMFS, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702; telephone, 813-893-3141, or a designee.

Rod and reel means a hand-held (including rod-holder) fishing rod with a manually or electrically operated reel attached.

Swordfish means a fish of the species *Xiphias gladius*.

Western North Atlantic swordfish stock means those swordfish in Food and Agricultural Organization statistical reporting areas 21 and 31. This area is bounded on the west by the North, Central, and South American land masses and on the east by a line running from the eastern coast of South America at 5°00′ N. latitude east to 40°00′ W. longitude, north to 36°00′ N. latitude, west to 42°00′ W. longitude, north to 59°00′ N. latitude, west to 44°00′ W. longitude, and north to Greenland.

Whole, when referring to swordfish, means a fish that is not gutted and the head and fins are intact.

[50 FR 33956, Aug. 22, 1985; 50 FR 35563, Sept. 3, 1985, as amended at 53 FR 24655, June 29, 1988; 53 FR 27694, July 22, 1988]

§ 630.3 Relation to other laws.

The relation of this part to other laws is set forth in § 620.3 of this chapter.

[53 FR 24655, June 29, 1988]

§ 630.4 Vessel permits.

(a) *General.* Effective January 1, 1986, a vessel of the United States fishing for, possessing, retaining, or landing swordfish for sale, trade, or barter, or any commercial longline fishing vessel of the United States with a bycatch of swordfish, whether or not retained for sale, trade, or barter, operating in the Atlantic, Gulf of Mexico, or Caribbean EEZ must have onboard at all times the permit required by this part. Vessels fishing handline gear in the Caribbean and any vessels fishing rod and reel gear in the EEZ are exempt.

(b) *Application.* An application for a fishing vessel permit under this section must be submitted by the vessel owner or operator on an appropriate form obtained from the Regional Director. The application must be submitted to the Regional Director and must contain the following information:

(1) Owner's name, mailing address, and telephone number;

(2) Vessel name, net tons, and length;

(3) Home port;

(4) State registration or Coast Guard documentation number;

(5) Target species;

(6) Gear type(s);

(7) Average trip length (in days); and

(8) Monthly distribution of fishing by area (e.g., Gulf of Mexico).

(c) *Issuance.* (1) Upon receipt of a properly completed application, the Regional Director will issue a permit within 30 days.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following date of notification, the application will be considered abandoned.

(d) *Expiration.* A permit expires on December 31 of each year.

(e) *Duration.* A permit is valid until it expires or is revoked, suspended, or modified under Subpart D of 15 CFR Part 904.

(f) *Alteration.* Any permit which has been altered, erased, or mutilated is invalid.

(g) *Replacement.* Replacement permits may be issued. An application for a replacement permit will not be considered a new application.

(h) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the vessel and vessel owner for which it is issued.

(i) *Display.* Any permit issued under this part must be carried aboard the fishing vessel at all times. The permit must be prominently displayed in the pilot house or offered for inspection upon request of any authorized officer.

(j) *Sanctions.* Subpart D of 15 CFR Part 904 governs the imposition of sanctions against a permit issued under this part. As specified in Subpart D, a permit may be revoked, modified, or suspended if the vessel for which the permit is issued is used in the commission of an offense prohibited by the Magnuson Act or by this part; or if a civil penalty or criminal penalty imposed under the Magnuson Act has not been paid.

(k) *Fees.* No fee is required for any permit under this part.

(l) *Change in application information.* Any change in the information specified in paragraph (b) of this section, such as the vessel owner or gear type, must be reported to the Regional Director within 15 days of the change. If there is a change in vessel owner, the vessel may not fish for swordfish until a new permit has been issued.

[50 FR 33957, Aug. 22, 1985, as amended at 53 FR 24660, June 29, 1988]

§ 630.5 Recordkeeping and reporting.

(a) Owners or operators of vessels of the United States who have been issued a permit under § 630.4 to fish for swordfish in the Caribbean and land swordfish in Puerto Rico or the U.S. Virgin Islands must report their catch to the Center Director by individual carcass weight by providing copies of their weigh-out sheets for all swordfish landed. Copies of the weigh-out sheets must be provided to the Center Director within 10 days after the swordfish are landed.

(b) The owner or operator of a vessel of the United States who has a permit issued under § 630.4 to fish for or land swordfish with gear other than rod and reel in the Atlantic, Gulf of Mexico, and Caribbean, and is selected by the Center Director must—

(1) Advise the Center Director by telephone 10 days in advance of each trip of the following:

(i) Departure information (port, dock, date, and time), and

(ii) Expected landing information (port, dock, and date).

(c) Owners or operators of vessels of the United States who have been issued a permit under § 630.4 and are selected by the Center Director must maintain a daily fishing record on forms provided by the Center Director according to instructions. These forms must be submitted to the Center Director on a monthly basis. The following information must be included on the forms:

(1) Date of set;

(2) Vessel name and official number;

(3) Federal permit number;

(4) Set location (latitude and longitude);

(5) Miles of gear per set;

(6) Number of hooks per set;

(7) Number of hooks between floats;

(8) Number of lights or lightsticks per set;

(9) Length of gangions (leader) used;

(10) Length of drop lines from floats;

(11) Sea surface temperature;

(12) Number of fish retained (for each species listed on the form);

(13) Number of fish discarded (for each species listed on the form); and

(14) Signature of captain.

[50 FR 33956, Aug. 22, 1985, as amended at 51 FR 16530, May 5, 1986; 51 FR 20300, June 4, 1986; 53 FR 24656, June 29, 1988]

EFFECTIVE DATE NOTE: The information collection requirements contained in § 630.5 (b) and (c) will continue in effect through October 31, 1988.

§ 630.6 Vessel identification.

(a) *Official number.* A vessel for which a permit is required by § 630.4 must display its official number—

(1) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;

(2) In block arabic numerals in contrasting color to the background;

(3) At least 18 inches in height for vessels over 65 feet in length and at least 10 inches in height for all other vessels; and

(4) Permanently affixed to or painted on the vessel.

(b) *Duties of operator.* The operator of each fishing vessel must—

(1) Keep the official number clearly legible and in good repair, and

(2) Ensure that no part of the fishing vessel, its rigging, its fishing gear, or anything carried aboard obstructs the view of the official number from any enforcement vessel or aircraft.

[50 FR 33956, Aug. 22, 1985, as amended at 53 FR 27694, July 22, 1988]

§ 630.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for, possess, retain, or land swordfish without a valid permit required under § 630.4 aboard the vessel.

(b) Purchase, sell, barter, or trade any swordfish taken by a vessel that does not have a valid permit required under § 630.4.

(c) Falsify or fail to report information required to be submitted or reported as specified in § 630.5.

(d) Falsify or fail to affix and maintain vessel markings as required by § 630.6.

(e) Land swordfish harvested in the commercial fishery except as specified under § 630.22.

(f) Fail to display a permit, as required by § 630.4.

(g) Fail to report information required to be submitted or reported, as specified in § 630.4.

(h) Interfere with, obstruct, delay or prevent by any means a lawful investigation or search in the process of enforcing this part.

[50 FR 33956, Aug. 22, 1985, as amended at 53 FR 24656, June 29, 1988; 53 FR 27694, July 22, 1988]

§ 630.8 Facilitation of enforcement.

See § 620.8 of this chapter.

53 FR 24656, June 29, 1988; 53 FR 27694, July 22, 1988]

§ 630.9 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

Subpart B—Management Measures

§ 630.20 Fishing year.

The fishing year is January 1 through December 31.

§ 630.21 [Reserved]

§ 630.22 Harvest limitations.

Swordfish harvested from the Western North Atlantic swordfish stocks in the commercial fishery must be landed in whole or dressed form.

§ 630.23 [Reserved]

§ 630.24 Specifically authorized activities.

The Secretary may authorize for the acquisition of information and data, activities which are otherwise prohibited by these regulations.

PART 638—CORAL AND CORAL REEFS OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

Subpart A—General Provisions

Sec.
638.1 Purpose and scope.
638.2 Definitions.
638.3 Relation to other laws.
638.4 Permits and fees.
638.5 Prohibitions.
638.6 Facilitation of enforcement.
638.7 Recordkeeping and reporting.
638.8 Penalties.

Subpart B—Management Measures

638.20 Seasons.
638.21 Harvest limitations.
638.22 Area, time limitations.
638.23 Gear limitations.
638.24 Specifically authorized activities.

Authority: 16 U.S.C. 1801 *et seq.*

Source: 49 FR 29608, July 23, 1984, unless otherwise noted.

Subpart A—General Provisions

§ 638.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic (FMP) developed by the Gulf of Mexico and South Atlantic Fishery Management Councils under the Magnuson Act.

(b) This part regulates fishing for coral and coral reefs by fishing vessels of the United States within the EEZ off the South Atlantic coastal States south of the Virginia-North Carolina border and in the Gulf of Mexico.

[49 FR 29608, July 23, 1984, as amended at 53 FR 24660, June 29, 1988]

§ 638.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Coral area means marine habitat where coral growth abounds including patch reefs, outer bank reefs, deepwater banks, and hard bottoms.

HAPC means coral habitat areas of particular concern.

Management area means that area of the EEZ off the South Atlantic coastal States south of the Virginia-North Carolina border and in the Gulf of Mexico.

Prohibited coral means (a) species of coral belonging to the Class Hydrozoa (fire corals and hydrocorals) and Class Anthozoa, Subclass Zooantharia (stony corals and black corals), and Subclass Octocorallaria (the seafans *Gorgonia flabellum* or *G. ventalina*), and (b) all coral and coral reefs in the HAPC's.

Regional Director means the Director, Southeast Region, NMFS, Duval Building, 9450 Koger Boulevard, St. Petersburg, FL 33702; telephone 813-893-3141; or a designee.

Science and Research Director means the Science and Research Director, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, telephone 305-361-5761, or a designee.

Scientific and educational purpose means for the purpose of gaining knowledge of coral for management and/or for the benefit of science and humanity.

Take means to attempt to or damage, harm, kill, or collect.

[49 FR 29608, July 23, 1984, as amended at 53 FR 24655, 24660, June 29, 1988; 53 FR 38294, Sept. 30, 1988]

§ 638.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) These regulations do not apply within the EEZ portion of the following National Marine Sanctuaries and National Parks:

(1) Everglades National Park (36 CFR 7.45);

(2) Looe Key National Marine Sanctuary (15 CFR Part 937);

(3) Fort Jefferson National Monument (36 CFR 7.27);

(4) Key Largo Coral Reef National Marine Sanctuary (15 CFR Part 929);

(5) Biscayne National Park (16 U.S.C. 410gg);

(6) Gray's Reef National Marine Sanctuary (15 CFR Part 938); and

(7) Monitor Marine Sanctuary (15 CFR Part 924).

[49 FR 29608, July 23, 1984, as amended at 53 FR 24655, 24660, June 29, 1988]

§ 638.4 Permits and fees.

(a) *General.* Permits are required for persons—

(1) Fishing for prohibited coral; or

(2) Using toxic chemicals to collect fish or other marine organisms in coral areas. A Florida permit is acceptable in lieu of a Federal permit for use of toxic chemicals.

(b) *Eligibility.* Fishing for prohibited coral must be for a scientific or educational purpose.

(c) *Fees.* There are no fees for Federal permits.

(d) *Application for a prohibited coral permit.* An application for a permit to fish for prohibited coral must be signed and submitted by the applicant on an appropriate form which may be obtained from the Regional Director. Applicants must provide the following information:

(1) Name, address, and telephone nmber of applicant;

(2) Name and address of harvester, company, institution, or affiliation;

(3) Amount of coral to be fished for by species;

(4) Size of each species;

(5) Projected use of each species;

(6) Collection techniques (vessel types, gear, number of trips);

(7) Period of fishing; and

(8) Location of fishing.

(e) *Application for toxic chemical permit.* An application for a Federal permit to collect fish or other organisms with toxic chemicals in coral areas must be signed and submitted by the applicant on an appropriate form which may be obtained from the Regional Director. Applicants must provide the following information:

(1) Name, address, and telephone number of applicant;

(2) Name and address of harvester, if other than applicant;

(3) Type of chemical;

(4) Period of fishing; and

(5) Location of fishing.

(f) *Permit conditions.* (1) Permits may not be transferred or assigned;

(2) Permits must be in the possession of the permittee while fishing for prohibited corals or using toxic chemicals;

(3) Permits must be presented for inspection upon request of any authorized officer;

(4) Permittee must have in possession sufficient documentation to establish identity as permittee (e.g., valid driver's license, etc.); and

(5) Other specific conditions as may be listed on the permits.

(g) Unless otherwise specified, application must be submitted to the Regional Director 45 days prior to the date on which the applicant desires to have the permit effective and permits will be issued for the period October 1 through the following September.

[49 FR 29608, July 23, 1984, as amended at 52 FR 36781, Oct. 1, 1987; 53 FR 24656, June 29, 1988]

§ 638.5 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fail to submit a report within 30 days following the effective period for a permit as specified in § 638.7.

(b) Take or collect fish or other marine organisms with toxic chemicals in coral areas except with a permit as specified in § 638.4.

(c) Fish for prohibited coral except as specified in § 638.4 and § 638.2.

(d) Use bottom longlines, traps, pots, bottom trawls, or dredges in an HAPC as specified in § 638.22.

[49 FR 29608, July 23, 1984, as amended at 53 FR 24656, June 29, 1988]

§ 638.6 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 638.7 Recordkeeping and reporting.

Any person holding a permit to take prohibited corals for scientific or educational purposes must submit an annual report of his or her harvest to the Science and Research Director within 30 days following the effective period for the permit. Specific reporting requirements will be provided with the issued permit.

[53 FR 24656, June 29, 1988, as amended at 53 FR 38294, Sept. 30, 1988]

§ 638.8 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988. Redesignated at 53 FR 24656, June 29, 1988.]

Subpart B—Management Measures

§ 638.20 Seasons.

The fishing year for all species of coral and coral resources begins at 0001 hours on October 1 and ends at 2400 hours on September 30.

§ 638.21 Harvest limitations.

(a) No person may fish for prohibited coral or fish with toxic chemicals in any coral area unless such person has in possession a valid permit issued under § 638.4.

(b) Prohibited coral taken as incidental catch to other fishing activities must be returned to the water in the general area of fishing as soon as possible. In those fisheries, such as scallops and groundfish, where the entire catch is landed, unsorted prohibited coral may be landed but not sold or traded.

§ 638.22 Area, time limitations.

The following coral HAPCs are established.

(a) *West and East Flower Garden Banks:* The geographical center point of the West Flower Garden Bank (Figures 1A and 1B) is located at 27°52′14.21″N. latitude, 93°48′54.79″W. longitude. The geographical center point of the East Flower Garden Bank (Figures 1A and 1B) is located at 27°55′07.44″N. latitude, 93°36′08.49″W. longitude. The HAPC is limited to the portions of each bank shallower than the 50 fathom (300 foot) isobath. The following restrictions apply within the West and East Flower Garden Bank HAPC:

(1) Fishing for coral is prohibited except as authorized by a permit issued under § 638.4, and

(2) Fishing with bottom longlines, traps, pots, and bottom trawls is prohibited.

(b) *Florida Middle Grounds.* (1) The area (Figure 2) is bounded by straight lines connecting the following points.

Point

A—28°42.5'N. latitude, 84°24.8'W. longitude
B—28°42.5'N. latitude, 84°16.3'W. longitude
C—28°11.0'N. latitude, 84°0.0'W. longitude
D—28°11.0'N. latitude, 84°7.0'W. longitude
E—28°26.6'N. latitude, 84°24.8'W. longitude
A—28°42.5'N. latitude, 84°24.8'W. longitude

(2) The following restrictions apply within the Florida Middle Grounds HAPC:

(i) Fishing for coral is prohibited except as authorized by a permit issued under § 638.4, and

(ii) Bottom longlines, traps, pots, and bottom trawls may not be fished within the area.

(c) The *Oculina* Bank:

(1) The area (Figure 3) is located approximately 15 nautical miles east of Fort Pierce, Florida, at its nearest point to shore. The area is bounded on the north by 27°53'N. latitude; on the south by 27°30'N. latitude; on the east by 79°56'W. longitude; and on the west by 80°0'W. longitude.

(2) Within the *Oculina* Bank HAPC fishing with bottom longlines, traps, pots dredges, and bottom trawls is prohibited.

[49 FR 29608, July 23, 1984; 49 FR 31427, Aug. 7, 1984, as amended at 52 FR 36781, Oct. 1, 1987]

§ 638.23 Gear limitations.

Toxic chemicals may not be used in taking fish or other marine organisms in or on coral reef areas except as may be specified by a permit issued under § 638.4.

§ 638.24 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

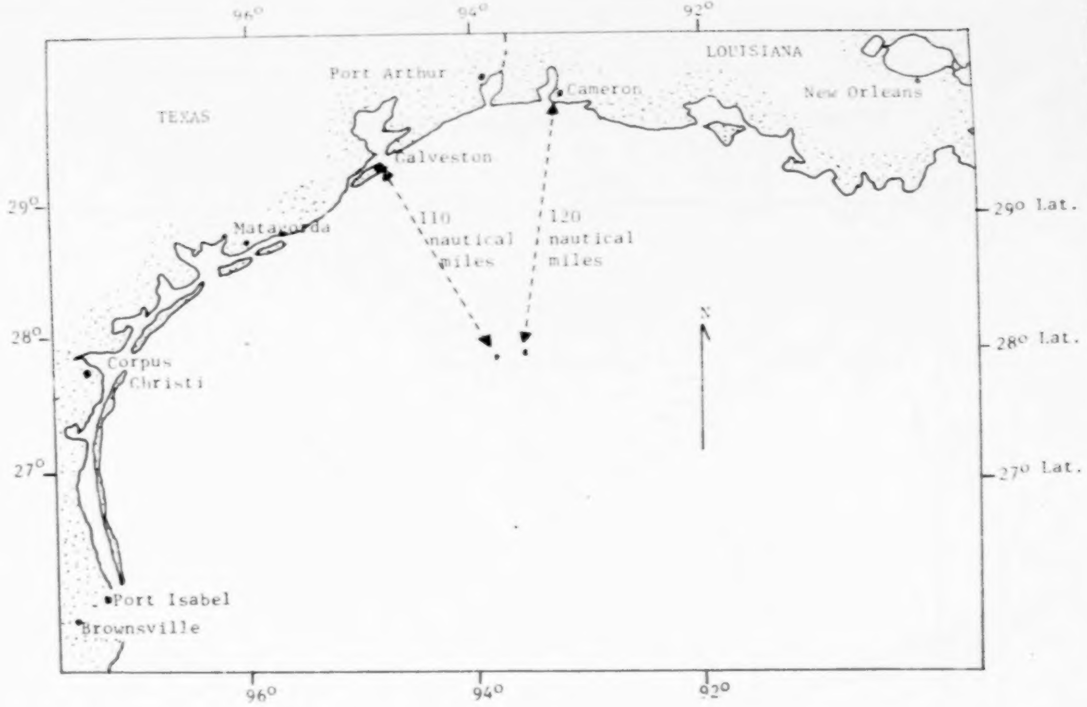
96°
94°
92°
LOUISIANA
TEXAS
Port Arthur
Cameron
New Orleans
Galveston
Matagorda
Corpus Christi
Port Isabel
Brownsville
110 nautical miles
120 nautical miles
N
29°
28°
27°
29° Lat.
28° Lat.
27° Lat.
96°
94°
92°

Figure 1A EAST AND WEST FLOWER GARDENS HABITAT AREAS OF PARTICULAR CONCERN

(Map for illustrative purposes only NOT TO SCALE)

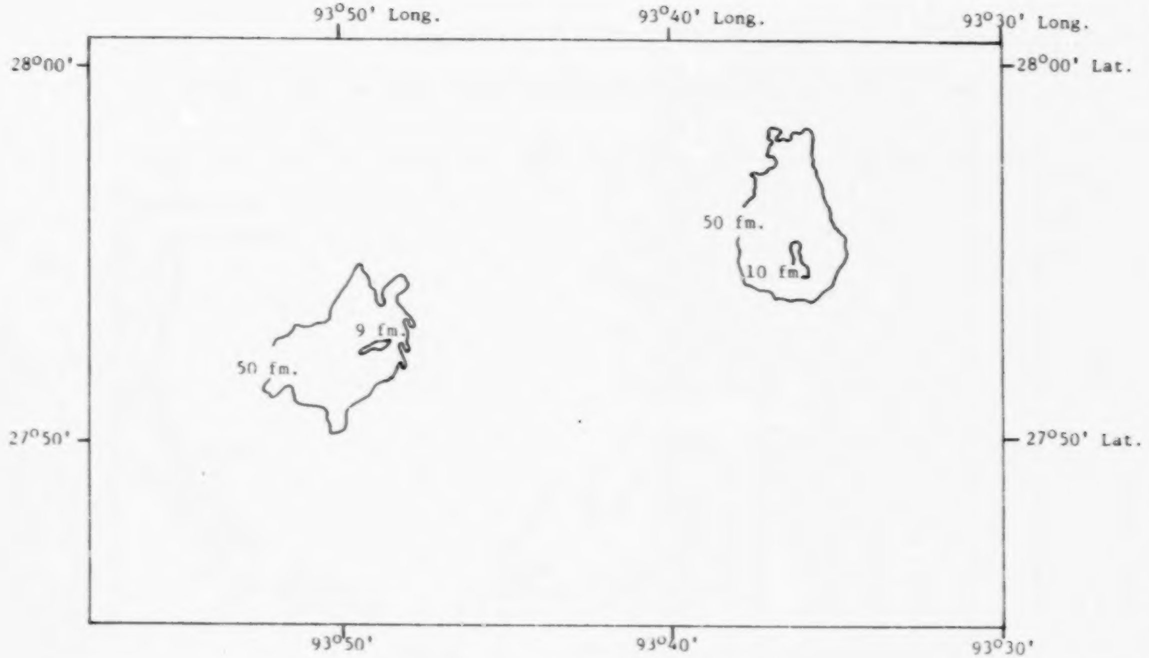
93°50' Long.
93°40' Long.
93°30' Long.
28°00'
28°00' Lat.
27°50'
27°50' Lat.
50 fm.
10 fm.
9 fm.
50 fm.
93°50'
93°40'
93°30'

Figure 1B EAST AND WEST FLOWER GARDENS HABITAT AREAS OF PARTICULAR CONCERN

(Map for illustrative purposes only NOT TO SCALE)

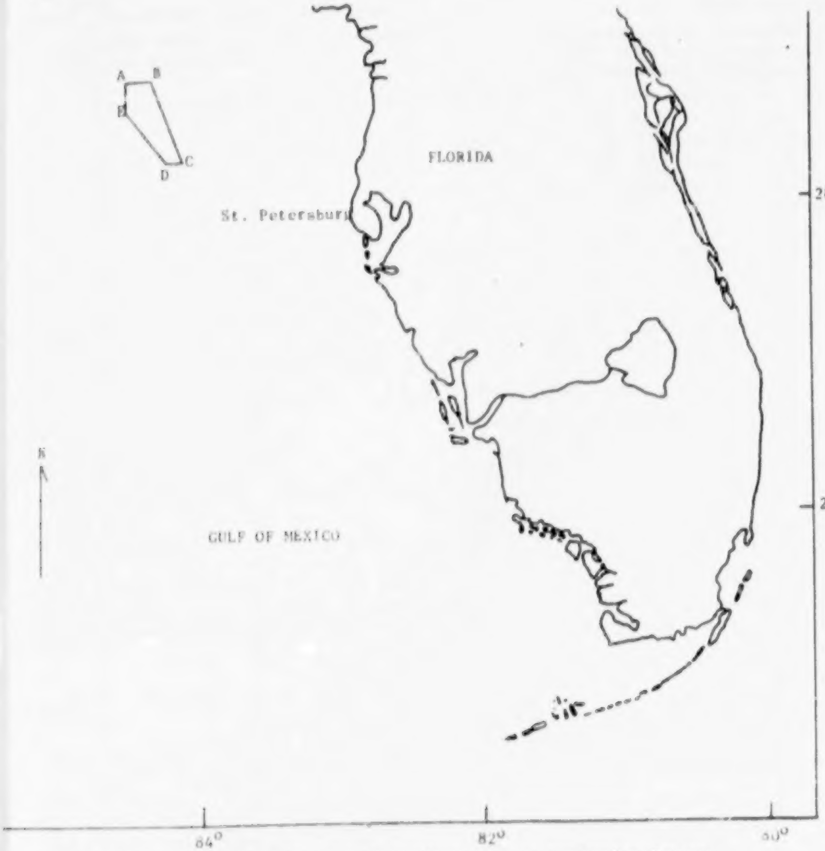
A
B
E
C
D
FLORIDA
St. Petersburg
N
GULF OF MEXICO
28°
26°
84°
82°
80°

Figure 2. Florida Middle Grounds Habitat Area of Particular Concern
(Map for illustrative purposes only NOT TO SCALE)

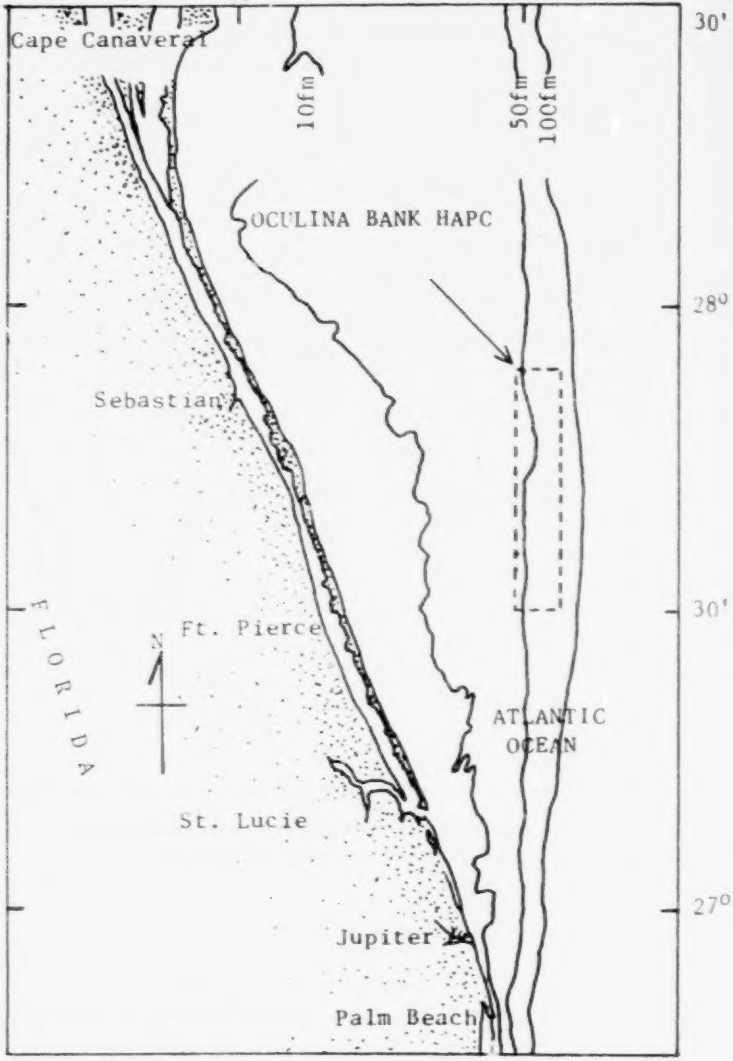
30'
80°
30'
Cape Canaveral
10fm
50fm
100fm
OCULINA BANK HAPC
28°
Sebastian
30'
FLORIDA
Ft. Pierce
N
ATLANTIC OCEAN
St. Lucie
27°
Jupiter
Palm Beach

Figure 3. Oculina Bank Habitat Area of Particular Concern

(Map for illustrative purposes only NOT TO SCALE)

PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

Subpart A—General Provisions

Sec.
640.1 Purpose and scope.
640.2 Definitions.
640.3 Relation to other laws.
640.4 Vessels, permits, and fees.
640.5 Recordkeeping and reporting. [Reserved]
640.6 Gear and vessel identification.
640.7 Prohibitions.
640.8 Facilitation of enforcement.
640.9 Penalties.

Subpart B—Management Measures

640.20 Seasons.
640.21 Harvest limitations.
640.22 Size limitations.
640.23 Gear limitations.
640.24 Authorized activities.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 640.1 Purpose and scope.

The purpose of this part is to implement the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Alantic developed by the South Atlantic and Gulf of Mexico Fishery Management Councils under the Magnuson Act. The regulations in this part govern fishing for spiny lobster and slipper (Spanish) lobster by vessels of the United States within the EEZ in the Atlantic Ocean and Gulf of Mexico along the coast of the South Atlantic States from the Virginia/North Carolina border south and through the Gulf of Mexico.

[47 FR 29203, July 2, 1982, as amended at 52 FR 22659, June 15, 1987]

§ 640.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Carapace length means a head-length measurement taken from the orbital notch inside the orbital spine, in a line parallel to the lateral rostral sulcus, to the posterior margin of the cephalothorax (Figure 1).

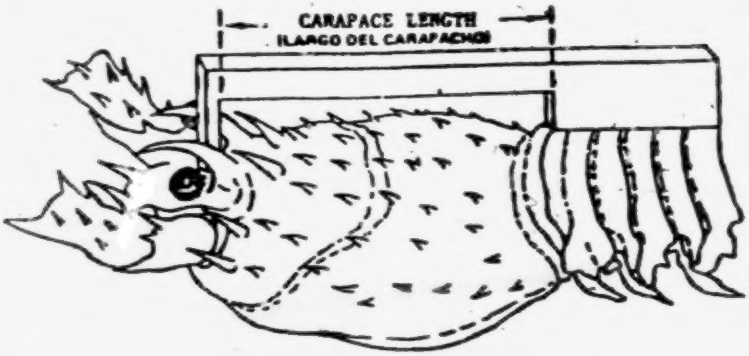

Figure 1

Commercial fishing means any fishing or fishing activities which result in the harvest of any marine or freshwater organisms, one or more of which (or parts thereof) is sold, traded, or bartered.

Degradable panel means a panel constructed of wood, cotton, or other material that will degrade at the same rate as a wooden trap.

Live well means a shaded container used for holding live lobsters aboard a vessel in which aerated seawater is continuously circulated from the sea. Circulation of seawater at a rate that replaces the water at least every 8 minutes meets the requirement for aeration.

Management area means that area of the EEZ adjacent to the territorial sea off the coasts of the States adjacent to the Gulf of Mexico and off the Atlantic Coast south of the Virginia-North Carolina border.

Recreational fishing means fishing or fishing activities which result in the harvest of fish, none of which (or parts thereof) is sold, traded, or bartered.

Regional Director means the Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Koger Boulevard, St. Petersburg, FL 33702; telephone 813-893-3141, or his designee.

Slipper (Spanish) lobster means the species *Scyllarides nodifer.*

Spiny lobster means the species *Panulirus argus.*

Tail length means the measurement, with the tail in a straight, flat position, from the anterior end of the exoskeleton ("shell") of the first abdominal (tail) segment to the tip of the closed tail.

[47 FR 29203, July 2, 1982, as amended at 52 FR 22659, June 15, 1987; 53 FR 17196, May 16, 1988; 53 FR 24655, June 29, 1988; 53 FR 38294, Sept. 30, 1988]

§ 640.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) The regulations in this part apply within the boundaries of any national park, monument, or marine sanctuary in the Gulf of Mexico and South Atlantic EEZ.

[47 FR 29203, July 2, 1982, as amended at 52 FR 22659, June 15, 1987; 53 FR 24655, June 29, 1988]

§ 640.4 Vessel permits and fees.

No permits are required for fishing vessels engaged in commercial fishing for spiny lobsters within the EEZ (but see vessel identification requirements in § 640.6(a)).

[47 FR 29203, July 2, 1982, as amended at 52 FR 22659, June 15, 1987]

§ 640.5 Recordkeeping and reporting. [Reserved]

[47 FR 29203, July 2, 1982]

§ 640.6 Gear and vessel identification.

(a) Traps, buoys, and all vessels and boats engaged in the spiny lobster trap fishery must be identified by the number and color code issued by the Regional Director, or through Florida's identification system.

(b) An application for a Federal number and color code must be submitted and signed by the owner or operator of the vessel on an appropriate form obtained from the Regional Director. The application must be sumbitted to the Regional Director 45 days prior to the date on which the applicant desires receipt of the number and color code.

(c) Vessels and boats engaged in the spiny lobster trap fishery must permanently and conspicuously display such color code and number in a manner as to be readily identifiable from the air and water; such color representation must be in the form of a circle at least 20 inches in diameter and the identification number must be at least 10 inches high.

(d) Each trap, unless part of a string of traps, must be marked by a floating buoy or a buoy designed to be submerged and automatically released at a certain time. Each string of traps must be marked with a buoy at each end of the string.

(e) Buoys must be of such color as to be easily distinguished, seen, and located; the identification number must be legible and at least 3 inches high on each buoy.

(f) Each trap, can, drum, or similar device must have a legible identification number at least 3 inches high permanently attached as in the case of buoys.

(g) All spiny lobster traps fished in the EEZ will be presumed to be the property of the most recently documented owner.

(h) Upon the sale or transfer of all or part of an owner's interest in spiny lobster traps which are fished in the EEZ, that owner must report the sale or transfer within 15 days to the Regional Director if the identification number and color code for those traps were issued by the Regional Director.

(i) An unmarked spiny lobster trap or buoy in the EEZ is illegal gear. Such trap, buoy, and connecting line may be disposed of in any manner considered appropriate by the Secretary or an authorized officer. An owner of such a trap or buoy remains subject to appropriate civil penalties.

[47 FR 29203, July 2, 1982, as amended at 52 FR 22659, June 15, 1987]

§ 640.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for spiny lobster without a vessel number, or falsify or fail to affix and maintain vessel and gear markings, as required by § 640.6.

(b) Place traps in the water or harvest spiny lobsters from traps before or after the dates specified in § 640.20(a).

(c) Harvest a spiny lobster with a trap except during the season specified in § 640.20(a)(1).

(d) Possess spiny lobster or any parts thereof in the EEZ, except as specified in § 640.20.

(e) Retain on board or possess on land a berried spiny or slipper lobster taken in the EEZ.

(f) Strip eggs from or otherwise molest a berried spiny or slipper lobster, as specified in § 640.21(a).

(g) Pull or tend traps except during the hours specified in § 640.21(b).

(h) Willfully tend, open, pull, or otherwise molest another person's traps, except as provided in § 640.21(b).

(i) Catch or retain more spiny lobsters during the special non-trap recreational fishery than are specified in § 640.21(c).

(j) Retain spiny lobsters smaller than the minimum size, except as specified in § 640.22.

(k) Use traps without degradable panels, or prohibited gear or methods, as specified in § 640.23.

(l) Fail to return immediately to the water unharmed a berried (egg-bearing) spiny or slipper lobster, as specified in § 640.21(a).

(m) Operate a vessel that fishes for spiny lobster in the EEZ with spiny lobster aboard in excess of the cumulative recreational catch limit, as specified in § 640.21(c)(3).

(n) Transfer at sea in the EEZ spiny lobster caught under the recreational catch limit specified in § 640.21(c) from a fishing vessel to any other vessel or to so transfer at sea any such spiny lobster taken from the EEZ.

(o) Fail to have on board or present for inspection an extension authorization, as required under § 640.20(a)(3).

(p) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search in the process of enforcing this part.

[47 FR 29203, July 2, 1982, as amended at 52 FR 22659, June 15, 1987; 53 FR 17196, May 16, 1988; 53 FR 24656, June 29, 1988]

§ 640.8 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 640.9 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

Subpart B—Management Measures

§ 640.20 Seasons.

(a) *Fishing season.* (1) The commercial and recreational fishing season for spiny lobster begins on August 6, one hour before official sunrise, and ends on March 31, one hour after official sunset.

(2) Prior to the season, spiny lobster traps may be placed in the water one hour before official sunrise on August 1 (soak period).

(3) After the season, traps must be removed from the water by one hour after official sunset on April 5 (removal period) unless an extension to the

removal period is granted by Florida in accordance with Chapter 46-24, Spiny Lobster (Crawfish) and Slipper Lobster, Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code. The extension authorization must be carried abroad the boat retrieving the traps and must be presented for inspection upon request of an authorized officer.

(4) Except as provided in paragraphs (a)(2) and (a)(3) of this section, no trap may be transported on the waters of the EEZ during the period from one hour after official sunset on March 31 to one hour before sunrise on August 6.

(5) A spiny lobster trap, buoy, or rope in the management area at times not authorized in this paragraph will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Secretary or an authorized officer. An owner of such a trap remains subject to appropriate civil penalties.

(b) *Special non-trap recreational fishery.* There is a special non-trap recreational fishing season on the first full weekend preceding August 1 from 0001 hours, Saturday, until 2400 hours, Sunday.

(c) *Possession.* Spiny lobsters or any parts thereof may be possessed in the EEZ only during the seasons specified in paragraphs (a)(1) and (b) of this section, unless accompanied by a proper bill of landing or other proof indicating lawful harvest outside the EEZ. Holding a spiny lobster in a trap while in the water during the soak period or during the removal period, or an extension thereto, will not be deemed possession provided such spiny lobster is returned immediately to the water unharmed whenever a trap is removed from the water during these periods.

[53 FR 17196, May 16, 1988]

§ 640.21 Harvest limitations.

(a) *Berried lobsters.* A berried spiny lobster or slipper lobster must be returned immediately to the water unharmed. If found in a trap, a berried lobster may not be retained in the trap. A berried lobster may not be stripped of its eggs or otherwise molested.

(b) *Pulling traps.* (1) Traps may be pulled or tended only during the period beginning one hour before official sunrise and ending one hour after official sunset.

(2) Traps may be pulled or tended only by the owner's vessel, unless the boat tending another person's trap has on board written consent of the trap owner.

(c) *Recreational catch.* (1) During the special non-trap recreational season described in § 640.20(b), the daily catch and possession of spiny lobsters in or from the EEZ is limited to six per person.

(2) A person who fishes for spiny lobster in the EEZ may not combine the recreational catch and possession limit of paragraph (c)(1) of this section with any bag or possession limit applicable to State waters.

(3) The operator of a vessel that fishes for spiny lobster in the EEZ during the special non-trap recreational season is responsible for the cumulative recreational catch, based on the number of persons aboard, applicable to that vessel.

(4) A person who fishes for or possesses spiny lobsters under the recreational catch and possession limit specified in paragraph (c)(1) of this section may not transfer spiny lobsters at sea from a fishing vessel to any other vessel.

[47 FR 29203, July 2, 1982, as amended at 52 FR 22659, June 15, 1987; 53 FR 17196, May 16, 1988]

§ 640.22 Size limitations.

(a) *Carapace length.* Except as provided in paragraph (b) of this section, spiny lobsters with a carapace length of 3.0 inches or less, or with a tail length of less than 5.5 inches, must be returned immediately to the water unharmed.

(b) *Attractants.* A live lobster under the minimum size may be retained for use as an attractant in a trap provided it is held in a live well abroad the vessel. No more than 100 undersized lobsters may be carried on board for use as attractants. The live well must provide a minimum of 3/4 gallons of seawater per spiny lobster.

[47 FR 29203, July 2, 1982, as amended at 53 FR 17197, May 16, 1988]

§ 640.23 Gear limitations.

(a) *Degradable panel.* Traps constructed of material other than wood must have a panel constructed of wood, cotton, or other degradable material located in the upper half of the sides or on top of the trap, that, when removed, will leave an opening in the trap no smaller than the diameter found at the throat or entrance of the trap.

(b) *Prohibited gear and methods.* (1) Spiny lobster may not be taken with spears, hooks, or similar devices, or gear containing such devices. In the EEZ, the possession of speared, pierced, or punctured lobsters is prima-facie evidence that prohibited gear was used to take such lobsters.

(2) Spiny lobsters may not be taken with poisons or explosives.

[47 FR 29203, July 2, 1982, as amended at 52 FR 22659, June 15, 1987]

§ 640.24 Authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

[47 FR 29203, July 2, 1982]

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

Subpart A—General Provisions

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AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 49 FR 39553, Oct. 9, 1984, unless otherwise noted.

EDITORIAL NOTE: For nomenclature changes to Part 641, see 52 FR 5118, Feb. 19, 1987.

Subpart A—General Provisions

§ 641.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico, prepared by the Gulf of Mexico Fishery Management Council under the Magnuson Act.

(b) This part regulates fishing for reef fish by persons on fixed structures and fishing vessels of the United States within the Gulf of Mexico portion of the EEZ.

§ 641.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Charter vessel means any fishing vessel that carries six or fewer passengers who fish for a fee.

Fish trap means any trap and the component parts thereof used for or capable of taking finfish, regardless of the construction material, except those traps historically used in the directed fisheries for crustaceans (blue crab, stone crab, and spiny lobster).

Fork length means the distance from the tip of the snout to the rear center edge of the tail (caudal fin).

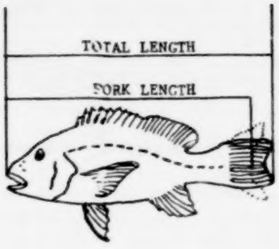


Figure 1. Illustration of fork length and total length measurement

Headboat means any fishing vessel that carries seven or more passengers who fish for a fee.

Management area means that area of the EEZ subject to the authority of the Gulf of Mexico Fishery Management Council.

Powerhead means any device with an explosive charge, usually attached to a speargun, spear, pole, or stick, which fires a projectile upon contact.

Reef fish refers to fish in the following two categories:

(a) *Management unit*—species in the directed fishery include the following:

Snappers—Lutjanidae Family

Queen snapper, *Etelis oculatus*
Mutton snapper, *Lutjanus analis*
Schoolmaster, *Lutjanus apodus*
Blackfin snapper, *Lutjanus buccanella*
Gulf red snapper, *Lutjanus campechanus*
Cubera snapper, *Lutjanus cyanopterus*
Gray (mangrove) snapper, *Lutjanus griseus*
Dog snapper, *Lutjanus jocu*
Mahogany snapper, *Lutjanus mahogoni*
Lane snapper, *Lutjanus synagris*
Silk snapper, *Lutjanus vivanus*
Yellowtail snapper, *Ocyurus chrysurus*
Wenchman, *Pristipomoides aquilonaris*
Voraz, *Pristipomoides macrophthalmus*
Vermilion snapper, *Rhomboplites aurorubens*

Groupers—Serranidae Family

Rock hind, *Epinephelus adscensionis*
Speckled hind, *Epinephelus drummondhayi*
Yellowedge grouper *Epinephelus flavolimbatus*
Red hind, *Epinephelus guttatus*
Jewfish, *Epinephelus itajara*
Red grouper, *Epinephelus morio*
Misty grouper, *Epinephelus mystacinus*
Warsaw grouper, *Epinephelus nigritus*
Snowy grouper, *Epinephelus niveatus*
Nassau grouper, *Epinephelus striatus*
Black grouper, *Mycteroperca bonaci*
Yellowmouth grouper, *Mycteroperca interstitialis*
Gag, *Mycteroperca microlepis*
Scamp, *Mycteroperca phenax*
Yellowfin grouper, *Mycteroperca venenosa*

Sea Basses—Serranidae Family

Southern sea bass, *Centropristis melana*
Bank sea bass, *Centropristis ocyurus*
Rock sea bass, *Centropristis philadelphica*

(b) *Fishery*—species in the reef fishery that are taken incidental to the directed fishery for reef fish included the following:

Tilefishes—Malacanthidae Family

Great northern tilefish, *Lopholatilus chamaeleonticeps*
Tilefish, *Caulolatilus* spp.

Jacks—Carangidae Family

Amberjacks, *Seriola* spp.

Triggerfishes—Balistidae Family

Gray triggerfish, *Balistes capriscus*

Wrasses—Labridae Family

Hogfish, *Lachnolaimus maximus*

Grunts—Haemulidae Family

Tomtate, *Haemulon aurolineatum*
White grunt, *Haemulon plumieri*
Pigfish, *Orthopristis chrysoptera*

Porgies—Sparidae Family

Grass porgy, *Calamus arctifrons*
Jolthead porgy, *Calamus bajonado*
Knobbed porgy, *Calamus nodosus*
Littlehead porgy, *Calamus proridens*
Pinfish, *Lagodon rhomboides*
Red porgy, *Pagrus sedecim*

Sand Perches—Serranidae Family

Dwarf sand perch, *Diplectrum bivittatum*
Sand perch, *Diplectrum formosum*

Regional Director means the Regional Director (or a designee), Southeast Region, NMFS, Duval Building, 9450 Koger Boulevard, St. Petersburg, FL 33702; telephone 813-893-3141.

Roller trawl means a trawl net equipped with rollers on a separate cable or line with spacers connecting the cable or line to the footrope, which makes it possible to fish the gear over rough bottom, i.e., in areas unsuitable for fishing conventional shrimp trawls. Rigid framed trawls adapted for shrimping over uneven bottom, and in wide use along the west coast of Florida, are not considered roller trawls.

Science and Research Director means the Science and Research Director, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, telephone 305-361-5761, or a designee.

Statistical area means one or more of the 21 statistical grids depicted in Figure 2.

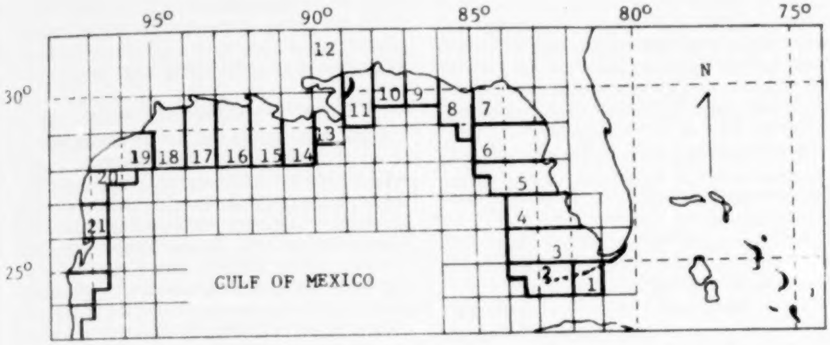


Figure 2. Statistical Grids for Reporting Harvest of Reef Fish.

Total length means the distance from the tip of the snout to the furthermost tip of the tail (caudal fin) depressed. (See Figure 1.)

[49 FR 39553, Oct. 9, 1984; 49 FR 43679, Oct. 31, 1984, as amended at 52 FR 5118, Feb. 19, 1987; 52 FR 35719, Sept. 23, 1987; 52 FR 36781, Oct. 1, 1987; 52 FR 37799, Oct. 9, 1987; 52 FR 39537, Oct. 22, 1987; 53 FR 24655, June 29, 1988; 53 FR 38294, Sept. 30, 1988]

§ 641.3 Relationship to other laws.

The relation of this part to other laws is set forth in § 620.3 of this chapter.

[53 FR 24655, June 29, 1988]

§ 641.4 Permits.

(a) *Applicability.* Fishing vessels from which fish traps are deployed and individuals fishing with fish traps from fixed structures are required to obtain a permit.

(b) *Application for permit.* An application for a fish trap permit must be submitted and signed by the owner or operator of the vessel or by the person fishing traps from a structure. The application must be submitted to the Regional Director 45 days prior to the date on which the applicant desires to have the permit made effective.

(1) Permit applicants fishing from vessels must provide all the following information:

(i) Name, mailing address including zip code, and telephone number of the owner of the vessel;

(ii) Name of the vessel;

(iii) The vessel's official number;

(iv) Home port or principal port of landing, gross tonnage, radio call sign, and length of the vessel;

(v) Engine horsepower and year the vessel was built;

(vi) Approximate fish hold capacity of the vessel;

(vii) Number, dimensions and estimated cubic volume of the fish traps that will be fished;

(viii) Any other information concerning vessel and gear characteristics requested by the Regional Director; and

(ix) A statement that the applicant will allow authorized officers reasonable access to his property (vessel and dock) to inventory fish traps for compliance with these regulations.

(2) Applicants fishing from fixed structures must provide the following information:

(i) Applicant's name, mailing address, and telephone number;

(ii) Name and number of the oil or gas structure or the most descriptive identification for other types of structures;

(iii) Approximate location of the structure in miles offshore and direction from principal port or latitude and longitude of the structure;

(iv) Number, dimensions, and estimated cubic volume of the fish traps that will be fished; and

(v) A statement that the applicant will allow authorized officers reasonable access to his property (structure) to inventory fish traps for compliance with these regulations.

(3) Any change in the information specified in paragraph (b) of this section must be submitted in writing to the Regional Director by the permit holder within 15 days of any such change. Failure to notify the Regional Director of any change in the required information will result in a rebuttable presumption that the information is still accurate and current.

(c) *Issuance.* Except as provided in Subpart D of 15 CFR Part 904, the Regional Director will issue a permit and numbered tag(s) to the applicant not later than 30 days from the date of receipt of a completed application and will designate a color code to be used for identification of vessels fishing fish traps and buoys used by such vessels.

(d) *Fees.* No fee will be assessed for any permit issued under this section.

(e) *Duration.* Permits will remain valid unless revoked, suspended, or modified pursuant to Subpart D of 15 CFR Part 904.

(f) *Transfer.* A permit issued under this section is not transferable or assignable. A permit is valid only for the fishing vessel and owner, or the person fishing traps from a structure, for which it is issued.

(g) *Display.* A permit issued under this section must be carried on board the fishing vessel or on the fixed structure at all times. The operator of a fishing vessel, or the person fishing fish traps from a structure, must present the permit for inspection upon request of any authorized officer.

(h) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

§ 641.5 Recordkeeping and reporting.

(a) A person specified in paragraphs (b) through (i) of this section must submit the information required by those paragraphs to the Science and Research Director except for data elements reported to a State agency acting as the Science and Research Director's designee. Failure to comply with the reporting requirements of the State of landing is a Federal violation.

(b) *Persons fishing fish traps.* The owner or operator of a fishing vessel or any other person permitted under § 641.4 who fishes for or lands reef fish in the Gulf of Mexico EEZ or in adjoining State waters, and has used fish traps to harvest such reef fish, must provide the following information regarding all fishing trips to the Science and Research Director. This information must be submitted within 7 days of completion of each trip:

(1) Permit number as provided for in § 641.4;

(2) Pounds of catch of reef fish by species;

(3) Date of trip, depth fished, and fishing location by statistical area;

(4) Number of trap hauls resulting in the catch;

(5) Duration (days and hours) traps were fished before each haul;

(6) Mesh size of traps;

(7) Other gear fished on trip; and

(8) Total catch in pounds by other gear.

(c) *Commercial vessel owners and operators not fishing fish traps.* Any person who owns or operates a fishing vessel that fishes for or lands any reef fish or parts thereof taken in the Gulf of Mexico EEZ or in adjoining State waters by any gear (other than fish traps) for sale, trade, or barter, and who is selected to report, must provide the following information regarding any fishing trip to the Science and Research Director, on forms provided:

(1) Name and official number of vessel;

(2) Date(s) of trip and fishing location(s) by statistical area(s);

(3) Pounds of catch of any reef fish by species;

(4) Type and quantity of gear fished;

(5) Duration (days and hours) of vessel fishing effort; and

(6) Duration (hours) gear was fished before each haul.

(d) *Dealers and processors.* Any person who receives reef fish or parts thereof by way of purchase, barter, trade, or sale from a fishing vessel or person that fishes for, or lands said fish, or parts thereof, from the Gulf of Mexico EEZ or from adjoining State waters, and who is selected to report, must provide the following information to the Science and Research Director at monthly intervals, or more frequently if requested, on forms provided:

(1) Name and address;

(2) Total poundage of each species received during that month, or other requested interval;

(3) Average monthly price paid for each species by market size; and

(4) Proportion of total poundage landed by each gear type.

(e) *Recreational fishermen interviews.* [Reserved]

(f) *Charter vessel owners and operators.* [Reserved]

(g) *Headboat owners and operators.* Any person who owns or operates a headboat that fishes for or lands reef fish in the Gulf of Mexico EEZ or in adjoining State waters, and who is selected to report, must maintain a fishing record for each trip, or a portion of such trips as specified by the Science and Research Director, on forms provided by the Science and Research Director and must report the following information at least quarterly. If convenient, individuals can report more frequently.

(1) Name and official number of vessel;

(2) Date(s) and location of each trip and duration of fishing (hours).

(3) Number of fishermen on each trip;

(4) Number of fish caught and approximate weight by species; and

(5) Any other fishery management data requested by the Science and Research Director.

(h) *Commercial vessel, charter vessel and headboat inventory.* Any person described under paragraphs (c), (f), and (g) of this section, and who was not selected to report on a monthly or quarterly basis, must provide the following information when interviewed annually by the Science and Research Director:

(1) Name and official number of vessel;

(2) Length and tonnage;

(3) Current home port;

(4) Fishing areas by statistical area;

(5) Ports where fish were landed during the last year;

(6) Type and quantity of gear; and

(7) Number of full- and part-time fishermen or crew members.

(i) Any owner or operator of a commercial or charter vessel or headboat, and any dealer or processor may be required upon request to make reef fish or parts thereof available for inspection by the Science and Research Director for the collection of additional information or for inspection by an authorized officer.

[52 FR 35719, Sept. 23, 1987; 52 FR 37799, Oct. 9, 1987, as amended at 53 FR 38294, Sept. 30, 1988]

EFFECTIVE DATE NOTE: At 52 FR 35719, Sept. 23, 1987, § 641.5 was amended, except for paragraph (g) which is being issued prior to approval by the Office of Management and Budget of the information collection requirements. When OMB approval is received, a notice announcing the effective date will be published in the FEDERAL REGISTER.

§ 641.6 Vessel and gear identification.

(a) Vessels and fixed structures from which fish traps are fished must identify, in conformance with this paragraph, the vessel or structure, fish traps, and buoys by the number and/or color code designated by the Regional Director under § 641.4(c) of this part.

(1) *Vessels or structures.* Vessels or structures must permanently and conspicuously display the permit number and the color code designated by the Regional Director under § 641.4(c) of this part in a manner as to be readily identifiable from the air and water; such color representation must be in the form of a circle at least 20 inches in diameter and the permit number must be at least 10 inches high.

(2) *Fish traps.* Each fish trap must have affixed to it permanently a metal or plastic identification tag supplied by the Regional Director, which displays the assigned permit and fish trap number.

(3) *Buoys.* Each fish trap, or the opposite ends of a string of fish traps, must be marked by a floating buoy or by a buoy designed to be submerged and automatically released. All buoys used to mark fish traps must display the designated color code and permit number so as to be easily distinguished, located, and identified.

(b) Fish traps fished in the EEZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to reef fish traps which are lost or sold if the owner of such traps reports the loss or sale within 15 days to the Regional Director.

(c) Unmarked reef fish traps deployed in the EEZ are illegal and may be disposed of in any appropriate manner by the Secretary (including an authorized officer). If owners of the unmarked traps can be ascertained, those owners remain subject to appropriate civil penalties.

§ 641.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for reef fish with fish traps without a valid permit, as required by § 641.4.

(b) Fish for reef fish with fish traps without a valid permit number, or possess on board a fishing vessel (or structure) unmarked fish traps or buoys, or falsify, or fail to affix and maintain vessel (or structure) or gear markings as required by § 641.6.

(c) Pull or tend fish traps except during the hours specified in § 641.21(a).

(d) Tend, open, pull, or otherwise molest or have in one's possession aboard a fishing vessel another person's fish traps except as provided in § 641.21(b).

(e) Use powerheads to fish for reef fish or use fish traps or roller trawls in the stressed area, as specified in § 641.22.

(f) Possess red snapper under the minimum size limit specified in § 641.23(a), except as specified in § 641.23(b).

(g) Possess red snapper in the EEZ, or land red snapper taken from the EEZ, without the head and fins intact as specified in § 641.23(c).

(h) Fish for reef fish with poisons or explosives, as specified in § 641.24(a).

(i) Fish with fish traps in the EEZ in areas other than the stressed area unless such traps are constructed as specified in § 641.24(b).

(j) Fish in the EEZ with more than 200 fish traps per vessel, as specified in § 641.25.

(k) Falsify or fail to report or provide information required to be submitted or reported or fail to make fish available for inspection, as required by § 641.5.

[49 FR 39553, Oct. 9, 1984, as amended at 52 FR 35720, Sept. 23, 1987; 53 FR 24656, June 29, 1988]

§ 641.8 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 641.9 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

Subpart B—Management Measures

§ 641.20 Fishing year.

The fishing year for reef fish begins on January 1 and ends on December 31.

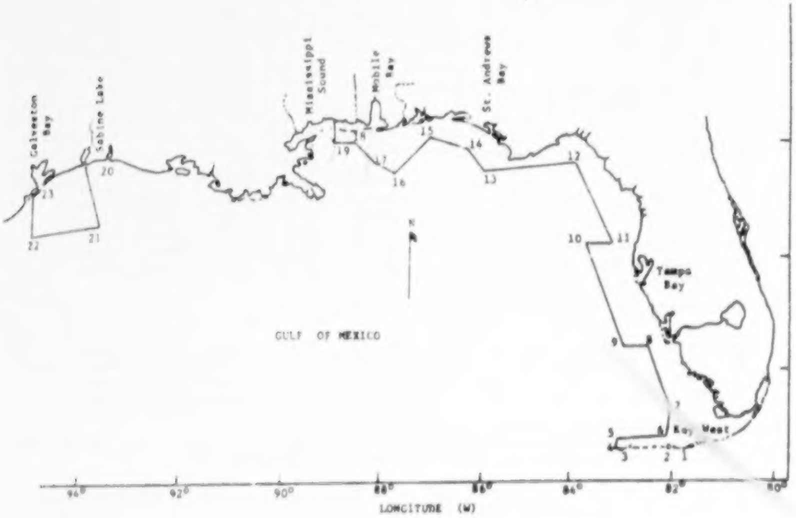
§ 641.21 Harvest limitations.

(a) Reef fish traps may be pulled or tended only during the period from official (civil) sunrise to official (civil) sunset.

(b) Reef fish traps may be tended only by persons (other than authorized officers) aboard the fish trap owner's vessel(s), or aboard another vessel if such vessel has on board written consent of the fish trap owner.

§ 641.22 Area limitations.

The stressed area is that portion of the management area which is enclosed by the inner boundary of the EEZ and the discontinuous line connecting the points of latitude and longitude listed in Table 1 (also see Figure 3).


Galveston Bay
Sabine Lake
Mississippi Sound
Mobile Bay
St. Andrews Bay
Tampa Bay
Key West
GULF OF MEXICO
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28°
26°
94°
92°
90°
88°
86°
84°
82°
80°
LONGITUDE (W)

FIGURE 3. MAP OF THE STRESSED AREA

(a) The stressed area is closed to the use of powerheads for the taking of reef fish in the management unit. The possession of a powerhead and mutilated reef fish from the management unit while in the stressed area will constitute *prima facie* evidence that reef fish were taken with a powerhead in the stressed area.

(b) The stressed area is closed to the use of roller trawls and fish traps. Fish traps in the stressed area will be considered unclaimed or abandoned property and may be disposed of according to § 641.6(c).

TABLE 1—POINTS FOR THE DISCONTINUOUS LINE DELINEATING THE STRESSED AREA

Point No.	Reference location [1]	Latitude (North)	Longitude (West)	Loran C coordinates [2]			
				W	X	Y	Z
	Starting at the mainland of Florida at the Dade/Monroe county line and proceeding down the Florida Keys Island chain (as delineated by the highway U.S. Route 1) to the following points:						
1	Key West	24°33.0′	81°48.7′	13927.8	30238.2	43654.2	62655.1
2	Marquesas Key	24°35.0′	82°06.2′	13894.5	30189.2	43748.8	62726.6
3	Gulf/South Atlantic Boundary	24°35.0′	83°00.0′	13768.5	29992.2	44049.2	62941.1
4	Tortugas Bank South	24°36.0′	83°06.0′	13753.4		44084.4	62965.5
5	Tortugas Bank North	24°44.0′	83°04.0′	13772.3		44087.4	62960.3
6	West of Smith Shoal	24°48.0′	82°06.5′	13915.1		43760.2	62727.7
7	Off Cape Sable	25°15.0′	82°02.0′	13974.7		43759.8	62704.9
8	Off Sanibel Island (Inshore)	26°26.0′	82°29.0′	14060.3		44117.4	62824.3
9	Off Sanibel Island (Offshore)	26°26.0′	82°59.0′	13990.0		44347.6	62970.7
10	Off Anclote Keys (Offshore)	28°10.0′	83°45.0′	14145.8		45328.0	63266.6
11	Off Anclote Keys (Inshore)	28°10.0′	83°14.0′	14224.3		45092.0	63066.4
12	Off Deadman Bay	29°38.0′	84°00.0′	14412.4		45167.7	63442.2
13	SW of Cape San Blas	29°30.5′	85°52.0′	13873.2		46702.0	63976.2
14	Off St. Andrews Bay	29°53.0′	86°10.0′	13816.5		46922.3	64050.8
15	Desoto Canyon	30°06.0′	86°55.0′	13434.6	30600.6	47045.8	
16	Alabama/Florida line	29°34.5′	87°38.0′	12971.5	30023.4	46886.0	
17	Off Mobile Bay	29°41.0′	88°00.0′	12766.5	29841.2	46930.9	
18	Mississippi/Alabama line	30°01.5′	88°23.7′	12537.6	29697.7	47029.3	
19	Chandeleur Islands	30°01.5′	88°51.0′	12262.0	29422.2	47028.6	
	Closing at the Mississippi Mainland	30°23.4′	88°51.0′	and			
	Starting at the west bank of Sabine Pass, Texas to the following points:						
20	Sabine Pass	29°39.0′	93°49.5′	11027.8	26367.1	46966.6	
21	Texas/Louisiana line, south	28°38.0′	93°32.0′	11136.4	26220.7	46815.1	
22	Off Galveston Island	28°28.0′	95°00.0′	11086.2	25306.9	46817.0	
23	Off Galveston Island	29°09.5′	95°00.0′	11036.9	25551.4	46909.0	

[1] Nearest identifiable landfall, boundary, navigation aid or submarine area.

[2] Loran coordinates are provided to aid the fishermen affected by the measures and are subject to local variations due to atmospheric conditions, therefore, are not used as part of the legal description of the stressed area.

[49 FR 39553, Oct. 9, 1984; 49 FR 43679, Oct. 31, 1984, as amended at 51 FR 28094, Aug. 4, 1986; 51 FR 29471, Aug. 18, 1986; 52 FR 35720, Sept. 23, 1987]

§ 641.23 Size and incidental catch restrictions.

(a) The minimum size limit for the possession of red snapper harvested in the EEZ is 12 inches fork length (13 inches total length), except as specified in paragraph (b) of this section.

(b) *Exceptions.* (1) An incidental catch of five red snappers under 12 inches fork length (13 inches total length) per person per trip is allowed.

(2) A person fishing with a trawl for species other than reef fish is exempt from the minimum size limit for red snapper. For the purposes of this paragraph, a person fishing with a trawl is considered to be fishing for species other than reef fish when the total weight of reef fish does not exceed five percent of all other fish (including shrimp) aboard.

(c) All red snapper harvested in the EEZ must be landed with the head and fins intact.

[49 FR 39553, Oct. 9, 1984, as amended at 53 FR 30847, Aug. 16, 1988]

§ 641.24 Gear limitations.

(a) Poisons or explosives may not be used in the taking of reef fish in the management unit; however, explosives in powerheads may be used outside the stressed area.

(b) Fish traps fished in the EEZ are subject to the following requirements and limitations:

(1) Fish traps are required to have panels or access door-hinging devices and door fasteners which will degrade or self-destruct and which must be constructed of one of the following degradable materials: (i) Untreated

hemp, jute, or cotton string of $\frac{3}{16}$-inch diameter or smaller; (ii) magnesium alloy, time float releases (pop-up devices) or similar magnesium alloy fasteners; or (iii) ungalvanized or uncoated iron wire at 0.055-inch diameter or smaller;

(2) The opening covered by the degradable panel or access door must be 144 square inches or larger, with one dimension of the area equal to or larger than the largest interior axis of the trap's throat (funnel) with no other dimension less than 6 inches;

(3) One degradable panel or access door must be located opposite each of the sides of the trap that has a funnel;

(4) Fish traps must meet all the following mesh size requirements (based on centerline measurements between opposite wires or netting strands):

(i) A minimum of 2 square inches of opening for each mesh;

(ii) One-inch minimum length for shortest side;

(iii) Minimum distance of 1 inch between parallel sides of rectangular openings, and 1.5 inches between parallel sides of square openings and of mesh openings with more than four sides;

(iv) One and nine-tenths (1.9) inches minimum distance for diagonal measures of mesh (Figure 4); and

(v) Each trap must have at least two escape windows on each of two sides (excluding the bottom) which are 2 x 2 inches or larger

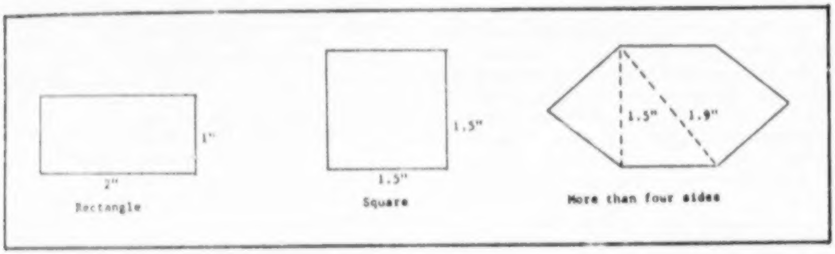

Figure 4. Examples of mesh sizes meeting the measurement criteria

(5) The maximum allowable size for fish traps fished in the EEZ shoreward of the 50-fathom isobath (300-foot contour) is 33 cubic feet in volume. Fish trap volume is determined by measurement of the external dimensions of the trap, and includes both the enclosed holding capacity of the trap and the volume of the funnel(s) within those dimensions. There is no size limitation for fish traps fished seaward of the 50-fathom isobath.

[49 FR 39553, Oct. 9, 1984, as amended at 50 FR 11166, Mar. 20, 1985; 52 FR 5118, Feb. 19, 1987; 52 FR 35720, Sept. 23, 1987]

§ 641.25 Effort limitations.

The maximum number of fish traps that may be assigned to a vessel in the EEZ is 200.

[51 FR 19209, May 28, 1986]

§ 641.26 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

Subpart A—General Provisions

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APPENDIX A

AUTHORITY: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 642.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for Coastal Migratory Pelagic Resources developed by the Gulf of Mexico and South Atlantic Fishery Management Councils under the Magnuson Act.

(b) This part regulates fishing for coastal migratory pelagic fish by fishing vessels of the United States off the Atlantic Coastal States south of the Virginia-North Carolina border and in the Gulf of Mexico.

[48 FR 5272, Feb. 4, 1983, as amended at 51 FR 26011, July 18, 1986]

§ 642.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Acceptable biological catch (*ABC*) means a range of harvest levels computed from stock assessment parameters that sets forth the levels of harvest which can be taken from a stock or migratory group while maintaining the stock at or near maximum sustainable yield. ABC may vary due to fluctuating recruitment, fluctuating abundance, and intensity of fishing effort.

Allocation means that portion or percentage of the total allowable catch of a stock or migratory group of fish which is allocated to a specific user group for harvest during a fishing year. Harvest levels may be limited to an allocation by specifying harvest quotas or by specifying nonquota restrictions such as bag limits, etc.

Charter vessel (includes headboats) means a boat or vessel whose captain or operator is licensed by the U.S. Coast Guard to carry paying passengers and whose passengers fish for a fee. Charter vessels with permits to fish on the commercial allocation for king mackerel are under charter when there are more than three persons aboard including captain and crew.

Charter vessel crew means those individuals, including the licensed vessel captain, who receive monetary or other compensation from the vessel owner or from the passengers who are engaged in fishing from the vessel as anglers.

Coastal migratory pelagic fish means the following species:

King mackerel, *Scomberomorus cavalla*
Spanish mackerel, *Scomberomorus maculatus*
Cero, *Scomberomorus regalis*
Cobia, *Rachycentron canadum*
Little tunny, *Euthynnus alletteratus*
Dolphin, *Coryphaena hippurus*
Bluefish, *Pomatomus saltatrix* (Gulf of Mexico only)

Commercial fisherman means a person who sells, trades, or barters any part of his catch of coastal migratory pelagic fish.

Fork length means the distance from the tip of the head to the center of the tail (caudal fin).

Migratory group means a group of fish that may or may not be a separate genetic stock but which for management purposes may be treated as a separate stock (See Figure 2 and § 642.29(a) for the geographical and seasonal boundaries between migratory groups of king mackerel and § 642.29(b) for the geographical boundary between migratory groups of Spanish mackerel.)

Overfishing or *overfished* means an excessive mortality rate on a stock of fish (mortality rate exceeds F_{MSY} or $F_{0.1}$) or spawning biomass low enough to affect recruitment.

Processor means a person who processes fish or fish products for commercial use or consumption.

Regional Director means the Regional Director, Southeast Region, NMFS, Duval Building, 9450 Koger Boulevard, St. Petersburg, FL 33702; telephone, 813-893-3141, or a designee.

Science and Research Director means the Science and Research Director, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, telephone 305-361-5761, or a designee.

Species refers to the specific scientific name for each fish identified under the definition of coastal migratory pelagic fish.

Statistical area means one or more of the statistical grids depicted in Figure 3.

Total allowable catch (*TAC*) means the maximum permissible level of annual harvest specified for a stock or migratory group after consideration of the biological, economic, and social factors with such level usually being specified from below the upper range of ABC. TAC may be set above the ABC range when it will not result in overfishing.

Total length means the distance from the tip of the head to the tip of the tail (caudal fin) while the fish is lying on its side normally extended.

Trip means a fishing trip regardless of number of days duration which begins with departure from a dock, berth, beach, seawall, or ramp and which terminates with return to a dock, berth, beach, seawall, or ramp.

[48 FR 5272, Feb. 4, 1983, as amended at 50 FR 34843, Aug. 28, 1985; 51 FR 26011, July 18, 1986; 52 FR 23838, June 25, 1987; 52 FR 36579, Sept. 30, 1987; 53 FR 24655, June 29, 1988; 53 FR 27693, July 22, 1988; 53 FR 38294, Sept. 30, 1988]

§ 642.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) These regulations apply within the boundaries of any national park, monument, or marine sanctuary in the Gulf of Mexico and South Atlantic EEZ.

[48 FR 5272, Feb. 4, 1983, as amended at 52 FR 23841, June 25, 1987; 53 FR 24655, June 29, 1988]

§ 642.4 Permits and fees.

(a) *Applicability.* (1) An owner or operator of a fishing vessel which fishes for king or Spanish mackerel under a commercial allocation in § 642.21 (a) or (c) is required to obtain an annual vessel permit.

(2) A qualifying owner or operator of a charter vessel may obtain a permit to fish under a commercial allocation for king or Spanish mackerel. Charter vessels must adhere to bag limits while under charter.

(3) An owner or operator of a charter vessel which fishes for coastal migratory pelagic fish is required to obtain an annual charter vessel permit.

(b) *Application for permit.* (1) An application for a permit may be submitted to the Regional Director at any time. An application must be signed by the owner or operator.

(2) An applicant for a permit to fish under a commercial allocation for king and/or Spanish mackerel must provide the following information:

(i) Name, mailing address including zip code, and telephone number of the owner and the operator of the vessel;

(ii) Name of vessel;

(iii) The vessel's official number;

(iv) Home port or principal port of landing, gross tonnage, radio call sign, and length of vessel;

(v) Approximate fish hold capacity of the vessel;

(vi) A sworn statement by the owner or operator certifying that at least 10 percent of his or her earned income was derived from commercial fishing, i.e., sale of the catch, during the preceding calendar year (January 1 through December 31);

(vii) Any other information concerning vessel, gear characteristics, or fishing area requested by the Regional Director;

(viii) The migratory group(s) of king and/or Spanish mackerel that will be fished; and

(ix) Proof of certification as required by paragraph (b)(3) of this section.

(3) The Regional Director or his designee may require the applicant to provide documentation supporting the sworn statement submitted under paragraph (b)(2)(vi) of this section

before a permit is issued or to substantiate why such a permit should not be revoked under paragraph (h) of this section.

(4) An applicant for a charter vessel permit must provide the following information:

(i) Name, mailing address including zip code, and telephone number of the owner and the operator of the vessel;

(ii) Name of vessel;

(iii) The vessel's official number;

(iv) Homeport or principal port of landing, and length of vessel; and

(v) Passenger capacity.

(c) *Issuance.* The Regional Director or his designee will issue permits at any time for an April through March permit year. Permits for the following permit year become available in February. Until a permit to fish under a commercial quota is received, bag limits apply.

(d) *Fees.* A fee may be assessed for any permit issued under this section. The cost of the permit, if any, will be posted on the application form and will be limited the administrative cost of issuing the permit which may not exceed $10.00.

(e) *Duration.* A permit is valid only for that portion of the permit year remaining after it is issued (April 1 through March 31 is the full permit year), unless revoked, suspended, or modified under Subpart D of 15 CFR Part 904.

(f) *Transfer.* A permit issued under this section is not transferable or assignable except on sale of the vessel to a new owner. A permit is valid only for the fishing vessel for which it is issued. A person purchasing a vessel with a permit to fish under a commercial allocation for king or Spanish mackerel or a charter vessel with a permit to fish for coastal migratory pelagic fish must apply for a permit in accordance with the provisions of paragraph (b) of this section. The application must be accompanied by a copy of an executed (signed) bill of sale. The new owner of a permitted vessel may fish with the preceding owner's permit until a new permit is issued or his application is disapproved, but for a period not to exceed 60 days from the date of purchase. Until a new permit is received, a copy of the executed (signed) bill of sale must be aboard the vessel and available for inspection by an authorized officer.

(g) *Display.* A permit issued under this section must be carried aboard the fishing vessel, and a vessel permitted to fish under a commercial allocation must be identified as provided for in § 642.6. The operator of a fishing vessel must present the permit for inspection upon request of an authorized officer.

(h) *Sanctions.* Subpart D of 15 CFR Part 904 governs the imposition of sanctions against a permit issued under this section.

(i) *Alteration.* Any permit which is altered, erased, or mutilated is invalid.

(j) *Replacement.* Replacement permits may be issued. An application for a replacement permit will not be considered a new application.

(k) *Change in permit application information.* A permittee must notify the Regional Director within 30 days after any change in the permit application information required by paragraph (b)(2) or (b)(4) of this section.

[50 FR 34844, Aug. 28, 1985, as amended at 52 FR 23838, June 25, 1987]

§ 642.5 Recordkeeping and reporting.

(a) *Commercial vessel owners and operators.* Any person who owns or operates a fishing vessel that fishes for or lands coastal migratory pelagic fish for sale, trade, or barter, or that fishes under a permit required in § 642.4(a)(1) in the Gulf of Mexico EEZ or South Atlantic EEZ or in adjoining State waters, and who is selected to report must provide the following information regarding any fishing trip to the Science and Research Director:

(1) Name and official number of vessel;

(2) Poundage of catch of any coastal migratory pelagic fish as defined by species;

(3) Depth fished and information regarding fishing location that is specific enough to enable the Science and Research Director to ascertain the statistical area fished (see Figure 3);

(4) Amount and person to whom sold, bartered, or traded;

(5) Number, size, and type of gear; and

(6) Period (hours or days) of fishing.

(b) *Charter vessel owners and operators.* Any person who owns or operates a charter vessel that fishes for or lands coastal migratory pelagic fish in the Gulf of Mexico EEZ or South Atlantic EEZ or adjoining State waters, and who is selected to report must maintain a daily fishing record on forms provided by the Science and Research Director. These forms must be submitted to the Science and Research Director weekly. Information to be included in the forms must include:

(1) Name or official number of vessel;

(2) Operator's Coast Guard license number;

(3) Date of trip;

(4) Number of fishermen on trip;

(5) Area fished;

(6) Fishing methods and type of gear;

(7) Hours fished;

(8) Species targeted; and

(9) Number and estimated weight of fish caught by species.

(c) *Dealers and processors.* Any person who receives coastal migratory pelagic fish or parts thereof by way of purchase, barter, trade, or sale from a fishing vessel or person that fishes for, or lands said fish, or parts thereof in the Gulf of Mexico EEZ or South Atlantic EEZ or in adjoining State waters, and who is selected to report, must provide the following information to the Science and Research Director at monthly intervals, or more frequently if requested, and on forms provided by the Science and Research Director:

(1) Dealer's or processor's name and address;

(2) County where fish were landed;

(3) Total poundage of each species received during that month, or other requested interval;

(4) Average monthly price paid for each species; and

(5) Proportion of total poundage landed by each gear type.

(d) *Recreational fishing vessels.* [Reserved]

(e) Any owner or operator of commercial, charter, or recreational vessels, and dealers or processors may be required upon request to make such fish or parts thereof available for inspection by the Science and Research Director for the collection of additional information or for inspection by an authorized officer.

(Approved by the Office of Management and Budget under control numbers 0648-0016 and -0159)

[50 FR 34844, Aug. 28, 1985, as amended at 52 FR 23839, 23841, June 25, 1987; 53 FR 38294, Sept. 30, 1988]

§ 642.6 Vessel identification.

(a) *Official number.* Each vessel of the United States engaged in fishing for king or Spanish mackerel under a commercial allocation and the permit specified in § 642.4(a)(1) must—

(1) Display its official number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The official number is the documentation number issued by the Coast Guard for documented vessels or the registration number issued by a State or the Coast Guard for undocumented vessels.

(2) The official number must be in block arabic numerals in contrasting color to the background.

(3) The official number must be at least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels.

(4) The official number must be permanently affixed to or painted on the vessel.

(b) *Duties of operator.* The operator of each fishing vessel must—

(1) Keep the official number clearly legible and in good repair, and

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material aboard obstructs the view of the official number from any enforcement vessel or aircraft.

[50 FR 34845, Aug. 28, 1985, as amended at 52 FR 23839, June 25, 1987]

§ 642.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for king or Spanish mackerel in violation of any area closures or season closures as specified in § 642.26.

(b) Possess in or harvest from the EEZ Spanish mackerel under the minimum size limit specified in § 642.23(a)(1), except for the catch allowance specified in § 642.23(a)(2).

(c) Possess in or harvest from the EEZ cobia under the minimum size limit specified in § 642.23(b).

(d) Possess in the EEZ king or Spanish mackerel on board a vessel with gill nets with a minimum mesh size less than that specified in § 642.24(a), except for an incidental catch allowance as specified in § 642.24(c).

(e) Fish in the EEZ for king mackerel from the Gulf migratory group or for Spanish mackerel from either the Gulf or Atlantic migratory group using a purse seine, as specified in § 642.24(b).

(f) Fail to display a permit as provided for in § 642.4(g).

(g) Falsify or fail to report information required to be submitted by § 642.4 and § 642.5.

(h) Fail to make fish available for inspection as required by § 642.5(e).

(i) Falsify or fail to display the official vessel identification number or comply with other provisions for vessel identification as specified in § 642.6.

(j) Purchase, sell, barter, trade, or accept in trade, king or Spanish mackerel, harvested in the EEZ from a specific migratory group or zone, for the remainder of the appropriate fishing year specified in § 642.20, after the allocation or quota for that migratory group or zone as specified in § 642.21 (a), (b), (c), or (d) has been reached and closure as specified in § 642.22 has been invoked. (This prohibition does not apply to trade in king or Spanish mackerel harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by dealers and processors).

(k) Fish for, retain, or have in possession in the EEZ aboard a vessel permitted under § 642.4(a)(1) to fish under a commercial allocation king mackerel from a migratory group or zone after the commercial allocation or quota for that migratory group or zone specified in § 642.21(a) has been reached and closure has been invoked as specified in § 642.22(a), except as provided in § 642.28(c)(2).

(l) Sell the incidental catch allowance of king or Spanish mackerel taken in the EEZ under § 642.24 (c) or (d) after the allocations or quotas specified in § 642.21 (a) or (c) have been reached and closure has been invoked as specified in § 642.22(a).

(m) Fish for, retain, or have in possession in the EEZ aboard a vessel permitted under § 642.4(a)(1) to fish under a commercial allocation Spanish mackerel from a migratory group after the commercial allocation for that migratory group specified in § 642.21(c) has been reached and closure has been invoked under § 642.22(a), except as provided for in § 642.28(c)(2).

(n) Land, consume at sea, sell, or have in possession at sea or at time of landing king or Spanish mackerel in excess of the bag limits specified in § 642.28, except as provided for under § 642.21 (a) and (c).

(o) Fish for king or Spanish mackerel in the EEZ under an allocation specified in § 642.21 (a) or (c) without a permit as specified in § 642.4(a)(1).

(p) Land king mackerel in other than an identifiable form as specified in § 642.28(b).

(q) Land Spanish mackerel and cobia without the head and fins intact as required by § 642.23(c).

(r) Possess king or Spanish mackerel harvested in the EEZ under a recreational allocation set forth in § 642.21 (b) or (d) after the bag limit for that recreational allocation has been reduced to zero under § 642.22(b).

(s) Sell king or Spanish mackerel harvested under the recreational bag limits in § 642.28(a) except as specified in § 642.28(d).

(t) Operate a vessel that fishes for king or Spanish mackerel in the EEZ with king or Spanish mackerel aboard in excess of the cumulative bag limit, based on the number of persons aboard, applicable to the vessel, as specified in § 642.28(f).

(u) Transfer at sea in the EEZ from a fishing vessel to any other vessel king or Spanish mackerel caught under the bag and possession limits specified in § 642.28(a) or transfer at sea any such king or Spanish mackerel taken from the EEZ.

(v) Own or operate a charter vessel which fishes for coastal migratory pelagic fish in the EEZ without a permit as specified in § 642.4(a)(3).

(w) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search in the process of enforcing this part.

[48 FR 5272, Feb. 4, 1983, as amended at 50 FR 34845, Aug. 28, 1985; 51 FR 9661, Mar. 20, 1986; 52 FR 23839, 23841, June 25, 1987; 53 FR 24656, June 29, 1988]

§ 642.8 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 642.9 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

Subpart B—Management Measures

§ 642.20 Seasons.

The fishing year for the Gulf migratory groups of king and Spanish mackerel for allocations and quotas begins at 0001 hours, July 1, and ends at 2400 hours, June 30, local time (see Figure 2). The fishing year for the Atlantic migratory groups of king and Spanish mackerel begins at 0001 hours, April 1, and ends at 2400 hours, March 31, local time. The fishing year for all other coastal migratory pelagic fish begins at 0001 hours, January 1, and ends at 2400 hours, December 31, local time.

[52 FR 23840, June 25, 1987]

§ 642.21 Allocations and quotas.

(a) *Commercial allocations and quotas for king mackerel.* (1) The commercial allocation for the Gulf migratory group of king mackerel is 1.09 million pounds per fishing year. This allocation is divided into quotas as follows:

(i) 0.75 million pounds for the eastern zone; and

(ii) 0.34 million pounds for the western zone.

(2) The commercial allocation for the Atlantic migratory group of king mackerel is 2.60 million pounds per fishing year. No more than 0.4 million pounds may be harvested by purse seines.

(3) A fish is counted against the commercial quota or allocation when it is first sold.

(b) *Recreational allocations for king mackerel.* (1) The recreational allocation for the Gulf migratory group of king mackerel is 2.31 million pounds per fishing year.

(2) The recreational allocation for the Atlantic migratory group of king mackerel is 4.40 million pounds per fishing year.

(c) *Commercial allocations for Spanish mackerel.* (1) The commercial allocation for the Gulf migratory group of Spanish mackerel is 2.85 million pounds per fishing year.

(2) The commercial allocation for the Atlantic migratory group of Spanish mackerel is 3.04 million pounds per fishing year.

(d) *Recreational allocations for Spanish mackerel.* (1) The recreational allocation for the Gulf migratory group of Spanish mackerel is 2.15 million pounds per fishing year.

(2) The recreational allocation for the Atlantic migratory group of Spanish mackerel is 0.96 million pounds per fishing year.

(e) *Zones.* The boundary between the eastern and western zones established for the quotas under the commercial allocation of the Gulf migratory group of king mackerel in paragraph (a)(1) of this section is a line extending directly south from the Alabama/Florida boundary (87°31′06″ W. longitude) to the outer limit of the EEZ (Figure 2).

[52 FR 25013, July 2, 1987; 52 FR 33594, Sept. 4, 1987, as amended at 52 FR 36579, Sept. 30, 1987; 53 FR 25613, July 8, 1988]

§ 642.22 Closures.

(a) The Secretary, by publication of a notice in the FEDERAL REGISTER, will close the king or Spanish mackerel commercial fishery in the EEZ for a particular migratory group or zone when the allocation or quota under § 642.21 (a) or (c) for that migratory group or zone has been reached or is projected to be reached. The notice of closure for an allocation or quota specified under § 642.21 (a) or (c) will also provide that the purchase, barter, trade, and sale within the boundaries of the closed area of king or Spanish mackerel taken from the EEZ after the closure is prohibited for the remainder of that fishing year. This prohibition does not apply to trade in Spanish or king mackerel harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by dealers or processors.

(b) The Secretary, after consulting with the Councils and by publication of a notice in the FEDERAL REGISTER, will reduce the bag limit for the recreational fishery for king or Spanish mackerel in the Atlantic or Gulf migratory group to zero when the allocation for that group under § 642.21 (b) or (d) is reached or is projected to be reached and when that group is overfished. After such reduction, all king or Spanish mackerel caught from that group must be returned to the sea immediately and possession of king or Spanish mackerel of that group on board recreational vessels is prohibited.

[52 FR 23840, June 25, 1987]

§ 642.23 Size restrictions.

(a) *Spanish mackerel*—(1) *Minimum size.* The minimum size for the possession of Spanish mackerel in or taken from the EEZ is 12 inches (fork length) or 14 inches (total length) for both recreational or commercial fisheries, except for the incidental catch allowance under paragraph (a)(2) of this section.

(2) *Catch allowance.* A catch of Spanish mackerel under the minimum size limit is allowed equal to five percent by weight of the total catch of Spanish mackerel on board.

(b) *Cobia.* The minimum size limit for the possession of cobia in or taken from the EEZ is 33 inches (fork length) or 37 inches (total length).

(c) All Spanish mackerel and cobia must be landed with the head and fins intact.

[50 FR 34846, Aug. 28, 1985, as amended at 52 FR 23841, June 25, 1987; 52 FR 36579, Sept. 30, 1987]

§ 642.24 Vessel, gear, equipment limitations.

(a) *Gill nets*—(1) *King mackerel.* The minimum mesh size for gill nets used to fish for king mackerel is 4¾ inches (stretched mesh).

(2) *Spanish mackerel.* The minimum mesh size for gill nets used to fish for Spanish mackerel is 3½ inches (stretched mesh).

(b) *Purse seines.* Except as provided in paragraph (d) of this section, the use of purse seines to fish for king mackerel from the Gulf migratory group or for Spanish mackerel from the Gulf or Atlantic migratory group is prohibited.

(c) *Incidental catch allowance.* An incidental catch of king mackerel is allowed equal to ten percent of the total catch by number of Spanish mackerel on board a vessel with gill nets with a minimum mesh size smaller than that specified in paragraph (a)(1) of this section.

(d) *Purse seine catch allowance.* A vessel with a purse seine aboard will not be considered as fishing for king mackerel or Spanish mackerel in violation of the prohibition of purse seines under paragraph (b) of this section, or, in the case of king mackerel from the Atlantic migratory group, in violation of a closure effected in accordance with § 642.22(a), provided the catch of king mackerel or Spanish mackerel does not exceed one percent or ten percent, respectively, by weight or number (whichever is less) of the catch of all fish aboard the vessel. Such king or Spanish mackerel will be counted toward the allocations and quotas provided for under § 642.21 (a) or (c) and are subject to the prohibition of sale under § 642.22(a).

[52 FR 23840, June 25, 1987]

§ 642.25 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

[48 FR 5272, Feb. 4, 1983]

§ 642.26 Area, time limitations.

(a) *Notices in the Federal Register.* Subject to the procedures and restrictions set forth in paragraphs (b) and (c) of this section, the Secretary may take any of the following actions by notice in the FEDERAL REGISTER under the circumstances specified:

(1) If the Secretary determines that a conflict exists in the king mackerel fishery between hook-and-line and gillnet fishermen in an area of the EEZ between 27°00.6′N. latitude and 27°50′N. latitude off the east coast of Florida, the Secretary may:

(i) Prohibit use of gillnet gear to take king mackerel within the areas (depicted in Figure 1 and described in Table 1) encompassed by points 1, 2, 5, and 6; 2, 3, 4, and 5; or 1, 2, 3, 4, 5, and 6;

TABLE 1

Point 1—Bethel Shoal light at 27°44.3′N. latitude, 80°10.4′W. longitude;

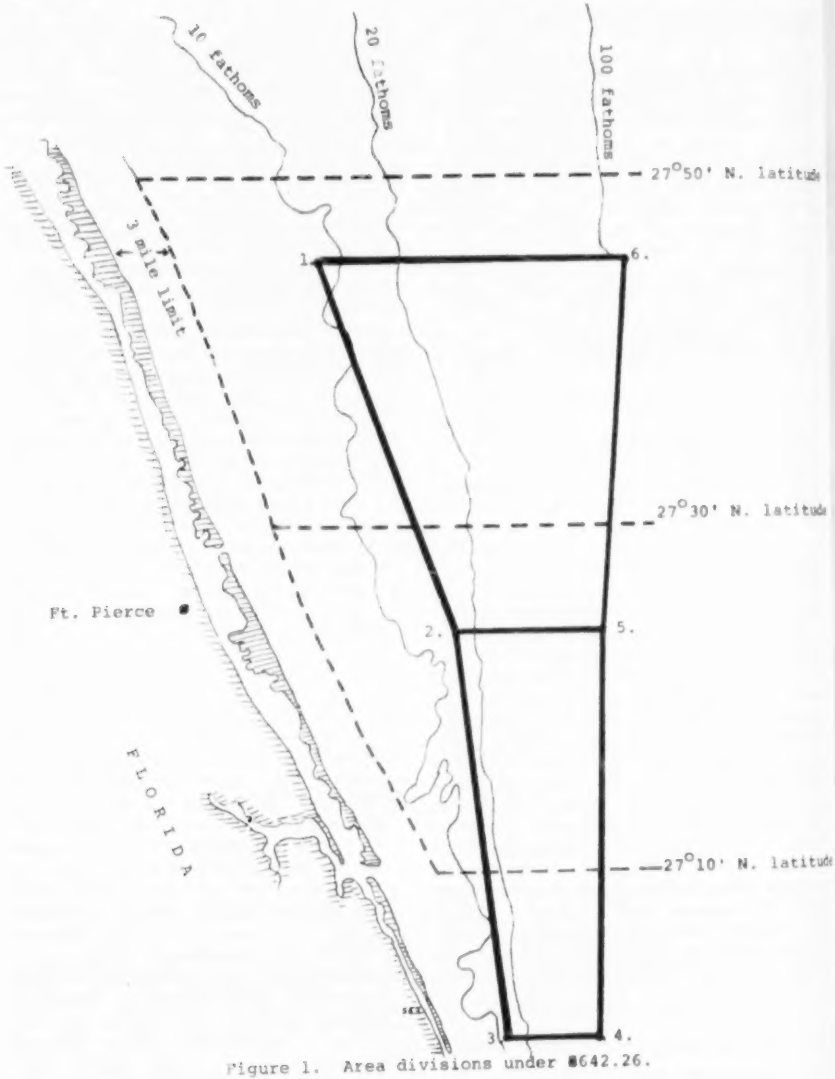
Point 2—A wreck 15 miles southeast of Fort Pierce Inlet at 27°23.5′N. latitude, 80°03.7′W. longitude;

Point 3—Marker WR 16, five miles northeast of Jupiter Inlet at 27°00.6′N. latitude, 80°02.6′W. longitude;

Point 4—27°00.6′N. latitude, 79°55.0′W. longitude at approximately the 100 fm. depth due east of Point 3;

Point 5—27°23.5′N. latitude, 79°54.0′W. longitude at approximately the 100 fm. depth due east of Point 2; and

Point 6—27°44.3′N. latitude, 79°53.5′W. longitude at approximately the 100 fm. depth due east of Point 1.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20 fathoms
100 fathoms
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3 mile limit
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6.
27°30' N. latitude
Ft. Pierce
2.
5.
FLORIDA
27°10' N. latitude
3.
4.

Figure 1. Area divisions under §642.26.

(ii) Prohibit use of hook-and-line gear to take king mackerel in the EEZ landward of a line between points 1 and 2, 2 and 3, or 1, 2, and 3;

(iii) In the first year a conflict arises, close the EEZ between 27°30′N. latitude and 27°10′N. latitude to the use of gill nets for taking king mackerel, and close the EEZ between 27°30′N. latitude and 27°50′N. latitude to the use of hook-and-line gear for taking king mackerel (in any succeeding year that a conflict develops, the Secretary may change the zone that is closed to each gear); or

(iv) Alternate daily the use of each gear within the area between 27°10′N. latitude and 27°50′N. latitude as follows:

(A) On even days of the month, close the area to the use of gillnet gear to take king mackerel.

(B) On odd days of the month, close the area to the use of hook-and-line gear to take king mackerel.

(2) If a conflict described in paragraph (a)(1) of this section results in death or serious bodily injury or significant gear loss, the Secretary may close the fishery for king mackerel to all users in the EEZ between 27°10′N. latitude and 27°50′N. latitude.

(b) *Procedures.* The Secretary shall use the following procedures in determining whether a conflict exists for which a notice in the FEDERAL REGISTER is appropriate:

(1) When the Secretary is advised by any person that a conflict exists, he will confirm the existence of such a conflict through information supplied him by NMFS, the U.S. Coast Guard, other appropriate law enforcement agencies, or personnel of the Florida agency with marine fishery management responsibility.

(2) The Secretary shall also confer with the Chairmen of the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils), the Florida agency with marine fishery management responsibility, and such other persons as the Secretary deems appropriate.

(c) *Restrictions on notices in the Federal Register.* (1) No notice in the FEDERAL REGISTER may be implemented which results in exclusive access of any user group or gear type to the fishery during the time the notice in the FEDERAL REGISTER is in effect.

(2) No notice in the FEDERAL REGISTER may be effective for more than five days, except under the conditions set forth in paragraph (c)(4) of this section.

(3) When the Secretary submits to the FEDERAL REGISTER a notice for implementation under this section, he will immediately arrange for a fact-finding meeting in the area of the conflict, to be convened no later than 72 hours from the time of implementation of the notice in the FEDERAL REGISTER.

(i) The following persons will be advised of such a meeting:

(A) The Chairmen of the Councils;

(B) The Florida agency with fishery management responsibility;

(C) Local media;

(D) Such user-group representatives or organizations as may be appropriate and practicable; and

(E) Other persons as deemed appropriate by the Secretary or as requested by the Chairmen of the Councils or the Florida agency.

(ii) The fact-finding meeting will be held for the purpose of evaluating the following:

(A) The existence of a conflict needing resolution by notice in the FEDERAL REGISTER;

(B) The appropriate term of the notice in the FEDERAL REGISTER, i.e., either greater or less than five days;

(C) Other possible solutions to the conflict besides Federal intervention; and

(D) Other relevant matters.

(4) If the Secretary determines, as a result of the fact-finding meeting, that the term of the notice in the FEDERAL REGISTER should exceed five days, he may, after consultation with the Chairmen of the Councils and the Florida agency, extend such notice in the FEDERAL REGISTER for a period not to exceed 30 days from the date of initial implementation. If the Secretary determines that it is necessary or appropriate for the term of such notice in the FEDERAL REGISTER to extend beyond 30 days, he may extend it a second time, after consulting with the Chairmen of the Councils, for such

period of time as necessary to resolve the conflict.

(5) The Secretary may rescind a notice in the FEDERAL REGISTER if he finds, through application of the same procedures set forth in paragraph (b) of this section, that the conflict no longer exists.

[48 FR 5272, Feb. 4, 1983, as amended at 50 FR 38538, Sept. 23, 1985; 52 FR 23841, June 25, 1987; 52 FR 36579, Sept. 30, 1987]

§ 642.27 Stock assessment procedures.

(a) The Councils will appoint an assessment group (Group) that will assess the condition of each stock of king and Spanish mackerel in the management unit on an annual basis. The Group will present a report of its assessment and recommendations to the Councils.

(b) The Councils will consider the report and recommendations of the Group and hold public hearings at a time and place of the Councils' choosing to discuss the Group's report. The Councils may convene the Advisory Panel and the Scientific and Statistical Committee to provide advice prior to taking final action. After receiving public input, the Councils will make findings on the need for changes.

(c) If changes are needed in MSYs, TAC, allocations, quotas, bag limits, or permits, the Councils will advise the Regional Director in writing of their recommendations, accompanied by the Group's report, relevant background material, and public comment. This report will be submitted each year by such date as agreed upon by the Councils.

(d) The Regional Director will review the Councils' recommendations, supporting rationale, public comments, and other relevant information. In the event the Regional Director rejects the recommendations, he will provide written reasons to the Councils for the rejection and existing regulations will remain in effect until the issue is resolved.

(e) If the Regional Director concurs that the Councils' recommendations are consistent with the goals and objectives of the FMP, the national standards, and other applicable law, the Regional Director will recommend that the Secretary publish notice in the FEDERAL REGISTER of any preliminary changes prior to the appropriate fishing year. A 15-day period for public comment will be afforded. After consideration of public comments, the Secretary may publish notice in the FEDERAL REGISTER of any final changes for that fishing year.

(f) Appropriate adjustments which may be implemented by the Secretary by notice in the FEDERAL REGISTER are:

(1) Adjustment of the point estimates of MSY for mackerel within the following ranges:

(i) King mackerel—21.9 million pounds to 35.2 million pounds.

(ii) Spanish mackerel—15.7 million pounds to 19.7 million pounds.

(2) Setting TACs for each stock or group of fish which should be managed separately, as identified in the FMP. A TAC may not exceed the upper level of ABC if it results in overfishing. No TAC will exceed the best point estimate of MSY by more than ten percent. Reductions or increases in allocations as a result of changes in TAC are to be as equitable as may be practicable, utilizing similar percentage changes to all participants in a fishery. (Changes in bag limits cannot always accommodate the exact desired level of change.)

(3) Implementing or modifying allocations, quotas, bag limits, or permits as necessary to limit the catch of each user group.

[50 FR 34846, Aug. 28, 1985, as amended at 52 FR 23840, June 25, 1987]

§ 642.28 Bag and possession limits.

(a) *Bag limits.* A person who fishes for king or Spanish mackerel from the Gulf or Atlantic migratory group in the EEZ, except a person fishing under a permit specified in § 642.4(a)(1) and an allocation specified in § 642.21 (a) or (c), or possessing the purse seine catch allowance specified in § 642.24(d), is limited to the following:

(1) *King mackerel Gulf migratory group.* (i) Possessing three king mackerel per person per trip, excluding the captain and crew, or possessing two king mackerel per person per trip, including the captain and crew, whichev-

er is the greater, when fishing from a charter vessel.

(ii) Possessing two king mackerel per person per trip when fishing from other vessels.

(2) *King mackerel Atlantic migratory group.* (i) Possessing two king mackerel per person per trip from the southern area.

(ii) Possessing three king mackerel per person per trip from the northern area.

(3) *Spanish mackerel Gulf migratory group.* (i) Possessing four Spanish mackerel per person per trip from the eastern area.

(ii) Possessing ten Spanish mackerel per person per trip from the western area.

(4) *Spanish mackerel Atlantic migratory group.* (i) Possessing four Spanish mackerel per person per trip from the southern area.

(ii) Possessing ten Spanish mackerel per person per trip from the northern area.

(5) *Areas.* (i) For the purposes of paragraphs (a)(2) and (4) of this section, the boundary between the northern and southern areas is a line extending directly east from the Georgia/Florida boundary (30°42′45.6″ N. latitude) to the outer limit of the EEZ.

(ii) For the purposes of paragraph (a)(3) of this section, the boundary between the eastern and western areas (identical to the eastern and western zones in the commercial fishery) is a line extending directly south from the Alabama/Florida boundary (87°31′06″ W longitude) to the outer limit of the EEZ.

(b) All king mackerel must be landed in identifiable form as to number and species (with the understanding that head and tail can be removed). All Spanish mackerel nust be landed with head and fins intact.

(c) After a closure under § 642.22(a) is invoked for a commercial allocation or quota specified in § 642.21 (a) or (c):

(1) A vessel permitted under § 642.4(a)(1) to fish under a commercial allocation may not fish under the bag limit specified in paragraph (a) of this section for the closed species/migratory group/zone, except as provided for under paragraph (c)(2) of this section.

(2) A charter vessel permitted to fish under a commercial allocation for mackerel may continue to harvest fish under the bag limit specified in paragraph (a) of this section provided it is under charter and the recreational allocation for the respective migratory group of mackerel under § 642.21 (b) or (d) has not been reduced to zero under § 642.22(b).

(d) A fisherman may sell his catch of mackerel taken under the bag limits in paragraph (a) of this section unless the respective migratory group or zone commercial allocation or quota in § 642.21 (a) or (c) has been reached and closure under § 642.22(a) has been invoked. Mackerel sold by fishermen are counted against the appropriate commercial allocation or quota in § 642.21 (a) or (c) for the area where they are caught.

(e) A person who fishes for mackerel in the EEZ may not combine the bag and possession limits of this part with any bag or possession limits applicable to State waters.

(f) The operator of a vessel that fishes for mackerel in the EEZ is responsible for the cumulative bag limit, based on the number of persons aboard, applicable to that vessel.

(g) A person who fishes for king or Spanish mackerel from the EEZ under the bag limits specified in paragraph (a) of this section, or who possesses such king or Spanish mackerel in the EEZ, may not transfer at sea king or Spanish mackerel from a fishing vessel to any other vessel.

[52 FR 23841, June 25, 1987, as amended at 52 FR 25014, July 2, 1987; 53 FR 25614, July 8, 1988]

§ 642.29 Area and time separation.

(a) *King mackerel*—(1) *Summer separation.* During the summer period (April 1 through October 31) the boundary separating the Gulf and Atlantic migratory groups of king mackerel is a line extending directly west from the Monroe/Collier County, Florida boundary (25°48′ N. latitude) to the outer limit of the EEZ (Figure 2).

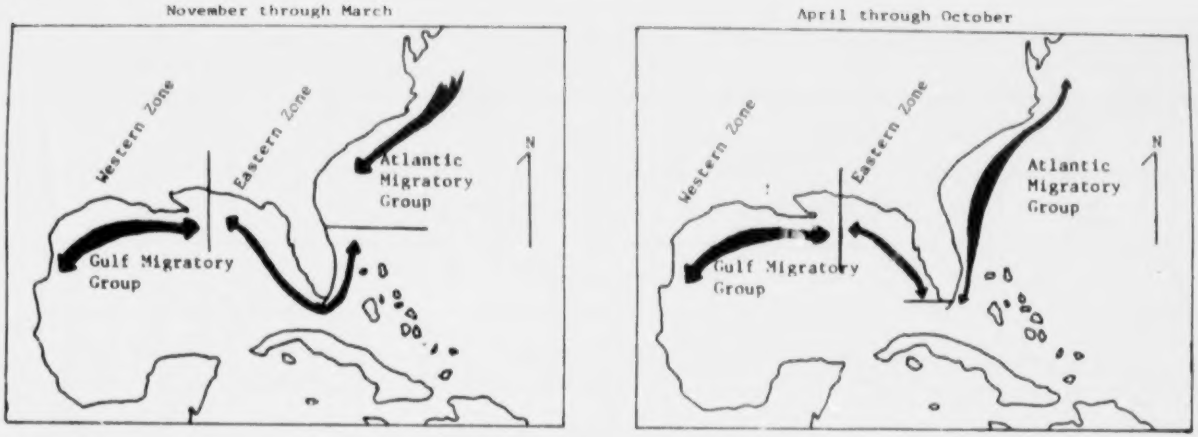
(2) *Winter separation.* During the winter period (November 1 through March 31) the boundary separating

the Gulf and Atlantic migratory groups of king mackerel is a line extending directly east from the Volusia/Flagler County, Florida boundary (29°25′ N. latitude) to the outer limit of the EEZ (Figure 2).

(b) *Spanish mackerel.* The boundary separating the Gulf and Atlantic migratory groups of Spanish mackerel is a line extending directly east from the Dade/Monroe County, Florida boundary (25°20.4′ N. latitude) to the outer limit of the EEZ.

[52 FR 23841, June 25, 1987]

APPENDIX A TO PART 642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Atlantic Migratory Group
Gulf Migratory Group
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April through October
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Atlantic Migratory Group
Gulf Migratory Group
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Figure 2. Range of Gulf and Atlantic migratory groups of king mackerel during winter and summer periods and commercial allocation zones for Gulf group king mackerel.

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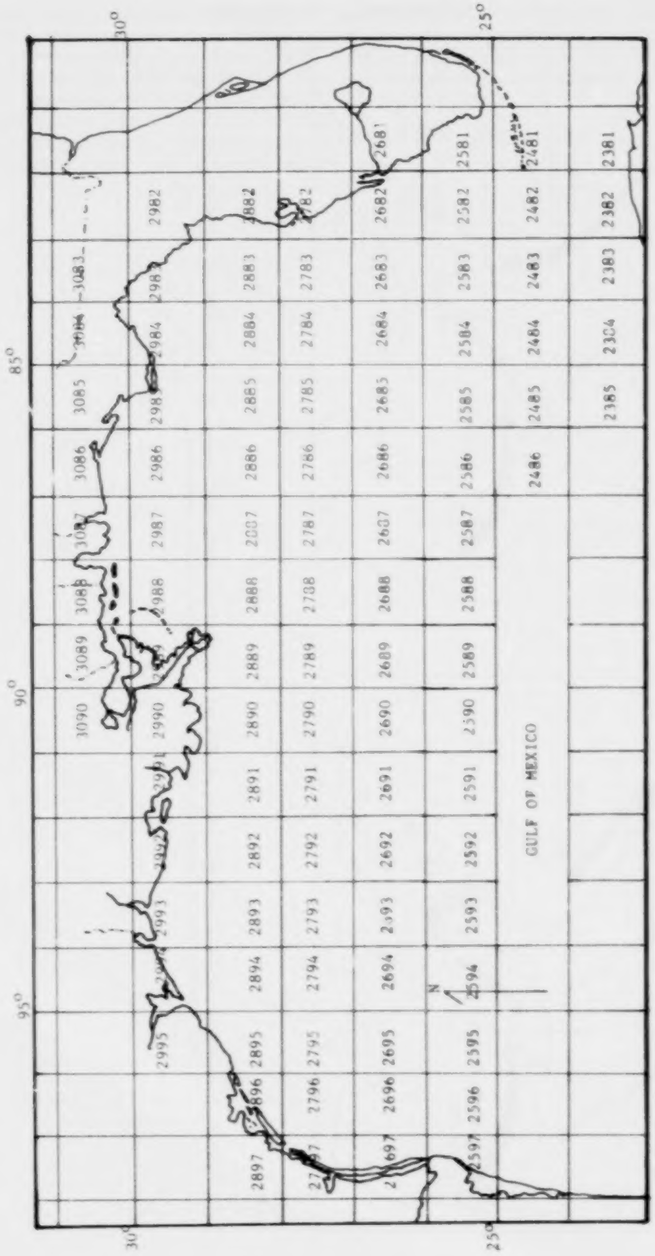
FIGURE 1 - STATISTICAL GRIDS FOR REPORTING THE HARVEST OF COASTAL MIGRATORY PELAGIC FISH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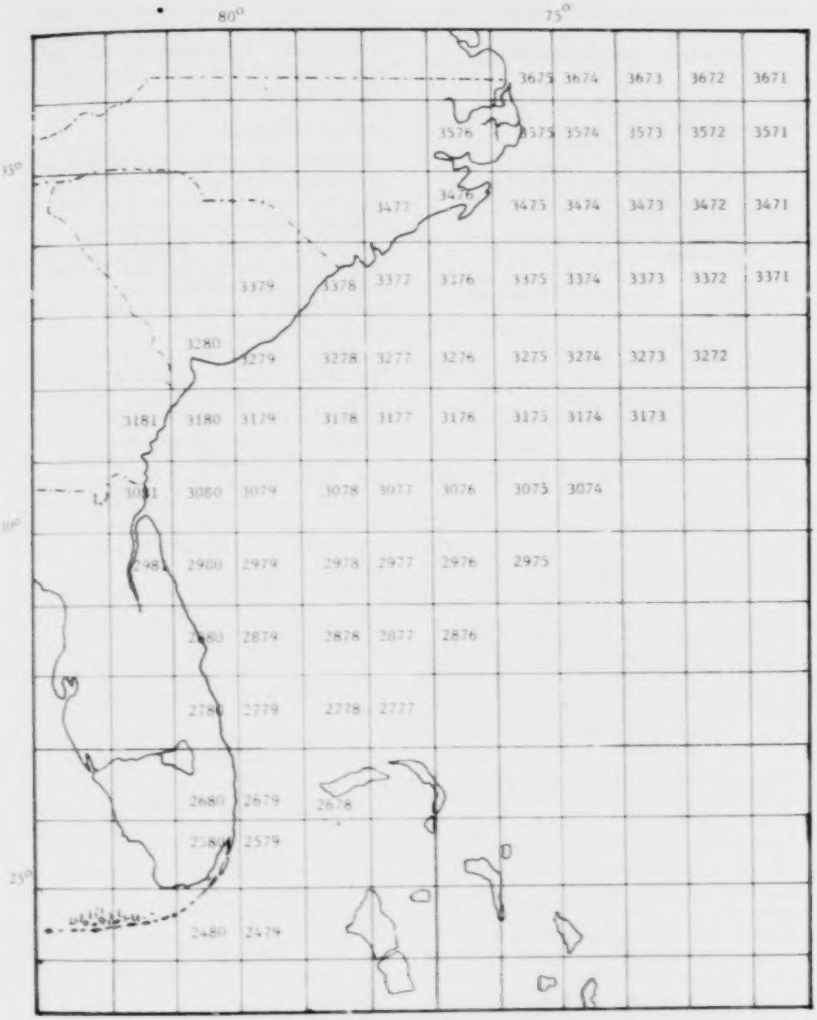
STATISTICAL GRIDS IN THE GULF OF MEXICO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STATISTICAL GRIDS FOR THE SOUTH ATLANTIC

[50 FR 34847, Aug. 28, 1985. Redesignated at 51 FR 9662, Mar. 20, 1986, and amended at 51 FR 11311, Apr. 2, 1986; 52 FR 23841, June 25, 1987]

PART 644—ATLANTIC BILLFISHES

Subpart A—General Provisions

Sec.
644.1 Purpose and scope.
644.2 Definitions.
644.3 Relation to other laws.
644.4 Permits and fees. [Reserved]
644.5 Recordkeeping and reporting.
644.6 Vessel identification. [Reserved]
644.7 Prohibitions.
644.8 Facilitation of enforcement.
644.9 Penalties.

Subpart B—Management Measures

644.20 Fishing year.
644.21 Size limits.
644.22 Gear limitations.
644.23 Incidental catch restrictions.
644.24 Restrictions on sale.
644.25 Specifically authorized activities.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 53 FR 37769, Sept. 28, 1988, unless otherwise noted.

EFFECTIVE DATE NOTE: At 53 FR 37769, Sept. 28, 1988, Part 644 was added, effective October 28, 1988, except § 644.7(g) and § 644.24(b) which are effective December 27, 1988. Sections 644.7(g) and 644.24(b) contain a collection of information requirement recently submitted to, and not yet approved by, the Office of Management and Budget (OMB). If that requirement is not approved by OMB before the latter effective date above, that date will be extended by further notice in the FEDERAL REGISTER.

Subpart A—General Provisions

§ 644.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for Atlantic Billfishes prepared jointly by the South Atlantic, New England, Mid-Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils.

(b) This part regulates fishing for billfish by a person fishing on, and possession of billfish by, a vessel of the United States shoreward of the outer boundary of the EEZ in the Atlantic Ocean (including the Gulf of Mexico and the Caribbean Sea), and regulates the possession and sale in any State of a billfish harvested from its management unit.

§ 644.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Billfish means sailfish, *Istiophorus platypterus;* white marlin, *Tetrapturus albidus;* blue marlin, *Makaira nigricans,* and longbill spearfish, *Tetrapturus pfluegeri.*

Billfish tournament means any fishing competition involving billfish in which participants must register or otherwise enter or in which a prize or award is offered for catching billfish.

Councils means the following Regional Fishery Management Councils:

(a) South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407-4699;

(b) New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906;

(c) Mid-Atantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19901-6790;

(d) Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 881, Tampa, FL 33609;

(e) Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, PR 00918-2577.

Drift net, sometimes called a drift entanglement net or drift gill net, means a flat, unmoored net suspended vertically in the water that entangles the head or other body parts of fish that attempt to pass through the meshes.

Eye-fork length (EFL) means the straight-line measurement from the eye to the fork of the caudal fin, as shown in Figure 1.

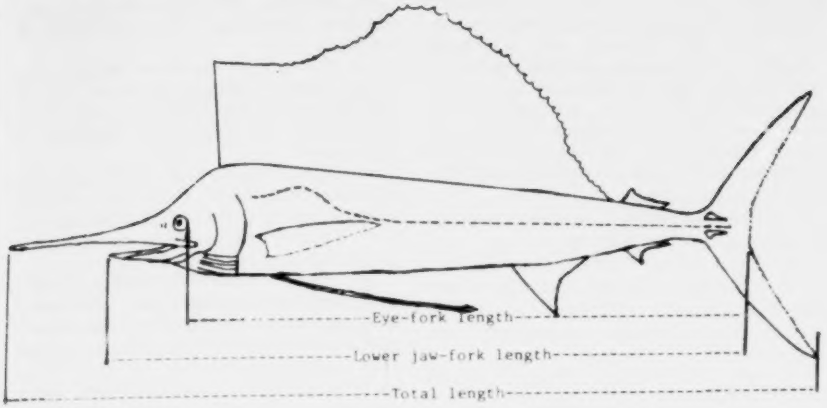

Figure 1. Billfish length measurements.

Lower jaw-fork length (*LJFL*) means the straight-line measurement from the tip of the lower jaw to the fork of the caudal fin, as shown in Figure 1.

Management unit means—

(a) For blue marlin and white marlin, the waters of the North Atlantic Ocean (including the Gulf of Mexico and the Caribbean Sea) north of 5°N. latitude;

(b) For sailfish, the waters of the North and South Atlantic Oceans (including the Gulf of Mexico and the Caribbean Sea) west of 30°W. longitude; and

(c) For longbill spearfish, the waters of the entire North and South Atlantic Oceans (including the Gulf of Mexico and the Caribbean Sea).

Pelagic longline means a type of fishing gear consisting of a length of line suspended horizontally in the water above the bottom from lines attached to surface floats and to which gangions (leaders) and hooks are attached.

Regional Director means the Director, Southeast Region, NMFS 9450 Koger Boulevard, St. Petersburg, FL 33702, telephone 813-893-3141, or a designee.

Rod and reel means a hand-held (includes rod holder) fishing rod with a manually or electrically operated reel attached.

Science and Research Director means the Science and Research Director, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, telephone 305-361-5761, or a designee.

Total length (*TL*) means the straight-line measurement from the tip of the upper jaw to the plane of the more extended tip of the caudal fin when in its natural position, as shown in Figure 1.

§ 644.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) Regulations governing fishing in the EEZ by vessels other than vessels of the United States appear at 50 CFR Part 611, Subpart A, and §§ 611.60 and 611.61.

§ 644.4 Permits and fees. [Reserved]

§ 644.5 Recordkeeping and reporting.

A person conducting a billfish tournament from a port in an Atlantic, Gulf of Mexico, or Caribbean State, and who is selected by the Science and

Research Director, must maintain and submit a fishing record on forms available from the Science and Research Director for each day of fishing in the tournament. Forms must be submitted so as to be received by the Science and Research Director within 10 days of the conclusion of the tournament and must be accompanied by a copy of the tournament rules.

(a) The following information must be included on each form:

(1) Tournament name;

(2) Recorder's name and telephone number;

(3) Date for which the information is recorded;

(4) Hours fished (time from first line in the water to last line out of the water);

(5) Name of each vessel fishing that day;

(6) For each vessel listed, the species of each billfish boated or released;

(7) The weight and length of each billfish brought ashore;

(8) The name, address, and signature of the tournament director; and

(9) The date signed.

(b) In addition to the information required to be reported by paragraph (a) of this section, the following information is desired, but is not mandatory:

(1) Prevailing weather conditions on the day reported, such as wind speed and direction, and sea height and direction; and

(2) Whether a tag was attached before the billfish was released.

(Information collection requirements approved by the Office of Management and Budget under control number 0648-0031)

§ 644.6 Vessel identification. [Reserved]

§ 644.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Falsify or fail to report information required to be submitted, as specified in § 644.5.

(b) Possess a billfish less than the minimum size limit specified in § 644.21(a).

(c) Fail to release a billfish in the manner specified in § 644.21(b) or § 644.23.

(d) Possess or retain a billfish by a vessel with a pelagic longline or drift net aboard or harvested by gear other than rod and reel, as specified in § 644.22.

(e) Purchase, barter, trade, or sell a billfish harvested from its management unit, as specified in § 644.24(a).

(f) Falsify information submitted in accordance with § 644.24(b).

(g) As a commercial seafood dealer or processor, possess a billfish without the documentation, or with incomplete or falsified documentation, specified in § 644.24(b).

(h) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

§ 644.8 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 644.9 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures

§ 644.20 Fishing year.

The fishing year is January 1 through December 31.

§ 644.21 Size limits.

(a) The following minimum size limits, expressed in terms of lower jaw-fork length (LJFL), apply for the possession of billfish:

(1) Blue marlin—86 in.

(2) White marlin—62 in.

(3) Sailfish—57 in.

(4) Longbill spearfish—no minimum size.

(b) A billfish under the minimum size limit must be released by cutting the line near the hook without removing the fish from the water.

(c) The following approximations of the minimum size limits for blue marlin, white marlin, and sailfish, expressed in terms of EFL, LJFL, TL and whole, live weight, are provided for the convenience of fishermen. These approximations may not be substituted for the minimum size limits expressed in terms of LJFL specified in paragraph (a) of this section.

	Eye-fork length (in.)	Lower jaw-fork length (in.)	Total length (in.)	Whole, live wt (lbs.)
Blue marlin	75	86	110	200
White marlin	53	62	81	50
Sailfish	49	57	76	30

§ 644.22 Gear limitations.

(a) The possession or retention shoreward of the outer boundary of the EEZ of a billfish harvested by gear other than rod and reel is prohibited

(b) The possession or retention shoreward of the outer boundary of the EEZ of a billfish by a vessel with a pelagic longline or drift net aboard is prohibited.

§ 644.23 Incidental catch restrictions.

A billfish harvested by gear other than rod and reel shoreward of the outer boundary of the EEZ must be released in a manner that will ensure maximum probability of survival. A billfish caught by a pelagic longline shoreward of the outer boundary of the EEZ must be released by cutting the line near the hook without removing the fish from the water.

§ 644.24 Restrictions on sale.

(a) A billfish harvested from its management unit may not be purchased, bartered, traded, or sold in any State.

(b) Except for a billfish landed in a Pacific State and remaining in the State of landing, a billfish that is possessed by a seafood dealer or processor will be presumed to have been harvested from its management unit unless it is accompanied by documentation that it was harvested from outside its management unit. Such documentation must contain the following:

(1) The information specified in 50 CFR Part 246 for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(2) The name and home port of the vessel harvesting the billfish;

(3) The port and date of offloading from the vessel harvesting the billfish; and

(4) A statement signed by the dealer attesting that each billfish was harvested from an area other than its management unit.

§ 644.25 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

PART 645—SPINY LOBSTER FISHERY OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

Subpart A—General Provisions

Sec.
645.1 Purpose and scope.
645.2 Definitions.
645.3 Relation to other laws.
645.4 Permits.
645.5 Recordkeeping and reporting. [Reserved]
645.6 Vessel and gear identification.
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Subpart B—Management Measures

645.20 Harvest limitations.
645.21 Size limitations.
645.22 Gear limitations
645.23 Specifically authorized activities.

AUTHORITY: 16 U.S.C 1801 *et seq.*

SOURCE: 49 FR 50050, Dec. 26, 1984, unless otherwise noted.

Subpart A—General Provisions

§ 645.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands prepared by the Caribbean Fishery Management Council under the Magnuson Act.

(b) This part regulates domestic fishing for spiny lobster within that portion of the EEZ surrounding Puerto Rico and the U.S. Virgin Islands. For Puerto Rico the inner boundary of the EEZ is nine nautical miles from the baseline used to measure the territorial sea; for the U.S.

Virgin Islands it is three nautical miles.

[49 FR 50050, Dec. 26, 1984, as amended at 53 FR 24660, June 29, 1988]

§ 645.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Berried lobster means an egg-bearing lobster.

Carapace length (*CL*) means a head-length measurement taken from the orbital notch inside the orbital spine, in a line parallel to the lateral rostral sulcus, to the posterior margin of the cephalothorax (figure 1).

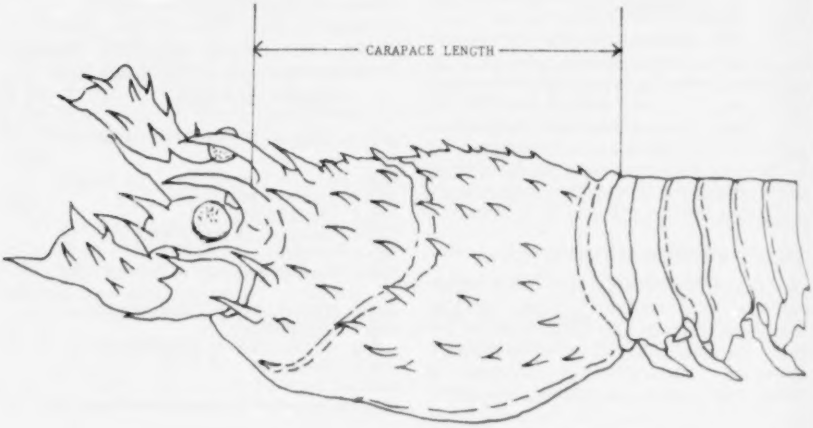

Figure 1 Method of Measuring Carapace Length

Fishing gear means snares, nets, pots, traps, and use of hands.

Management area means that portion of the EEZ adjacent to the waters under the jurisdiction of the U.S. Virgin Islands and Puerto Rico.

Regional Director means the Regional Director, Southeast Region, National Marine Fisheries Service, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702; telephone 813-893-3141, or a designee.

Spiny lobster means *Panulirus argus*.

[49 FR 50050, Dec. 26, 1984, as amended at 53 FR 24655, 24660, June 29, 1988]

§ 645.3 Relation to other laws.

The relation of this part to other laws is set forth in § 620.3 of this chapter.

[53 FR 24655, June 29, 1988]

§ 645.4 Permits.

(a) *General.* A vessel in the spiny lobster fishery must possess a valid fishing permit and color code issued by the Regional Director, unless the vessel possesses a valid fishing permit and color code issued by the Government of Puerto Rico or the Government of the Virgin Islands.

(b) *Application to the Regional Director.* (1) An application for a Federal permit and color code must be submitted to the Regional Director 45 days prior to the date on which the applicant desires receipt of the permit and color code.

(2) Each application must contain the following information:

(i) The applicant's name, mailing address, and telephone number;

(ii) The name and length of the vessel;

(iii) The vessel's official number; and

(iv) The vessel's radio call sign.

(c) *Fees.* No fee is required for a permit or color code issued by the Regional Director under this part.

Editorial Note: Section 645.4 contains collection of information requirements. A request to collect this information has been submitted to the Office of Management and Budget for approval.

§ 645.5 Recordkeeping and reporting. [Reserved]

[53 FR 24656, June 29, 1988]

§ 645.6 Vessel and gear identification.

(a) *Vessel identification.* Each fishing vessel subject to this part must display its official number and color code issued with the vessel's permit on the port and starboard sides of the deckhouse or hull. In addition, each vessel over 25 feet long must display its official number and color code on an appropriate weather deck. All official numbers and color codes must be displayed permanently and conspicuously so as to be readily identifiable from the air and water. The number must contrast with the background and be in block Arabic numerals at least 18 inches high for vessels over 65 feet long, at least 10 inches high for vessels over 25 feet long, and at least 3 inches high for vessels 25 feet long or smaller. The color code representation must be in the form of a circle of a diameter not less than the height of the numerals or, in the case of a 3-inch high numerals, in the form of a strip not less than 3 inches high and 18 inches long.

(b) *Duties of operator.* The operator of each fishing vessel subject to this part must (1) Keep the markings displaying the official number and color code clearly legible and in good repair; and (2) Insure that no part of the vessel, its rigging or its fishing gear obstructs the view of the official number and color code from an enforcement vessel or aircraft.

(c) *Gear identification.* (1) All traps, pots, and buoys used in the spiny lobster fishery must be marked and identified as follows:

(i) Buoys affixed to traps and pots must bear the number and color code specified with the vessel's permit. The identification number must be legible and at least 3 inches high on each buoy.

(ii) Traps and pots must bear the number specified with the vessel's permit. The number must be legible and at least 3 inches high, or as high as the widest available space if such space is less than 3 inches wide. As an alternative, the number may be stamped on a plate of non-corrosive metal or plastic and securely affixed to the trap or pot.

(2) Spiny lobster traps, pots, and buoys fished in the EEZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to spiny lobster traps which are lost or sold if the owner of such traps reports in writing the loss or sale within 15 days to the Regional Director, the Government of Puerto Rico, or the Government of the U.S. Virgin Islands, whichever entity issued the vessel's permit.

(3) Unmarked spiny lobster traps deployed in the EEZ are illegal and may be disposed of in any appropriate manner by the Secretary or the Secretary's designee (including an authorized officer). Lines and buoys are considered part of the trap. If owners of the unmarked traps can be ascertained, those owners remain subject to appropriate civil penalties.

[49 FR 50050, Dec. 26, 1984, as amended at 53 FR 24660, June 29, 1988]

Editorial Note: Section 645.6 contains collection of information requirements. A request to collect this information has been submitted to the Office of Management and Budget for approval.

§ 645.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Falsify or fail to affix and maintain gear and vessel markings as required by § 645.6.

(b) Retain on board or possess on land any berried spiny lobster, as specified in § 645.20(a)(1).

(c) Strip eggs from or otherwise molest any berried spiny lobster as specified in § 645.20(a)(2).

(d) Willfully tend, pull, open, or otherwise molest another person's traps except as provided in § 645.20(b).

(e) Possess in the EEZ any spiny lobster with a carapace length less than the minimum size limit specified in § 645.21(a) except as allowed in § 645.21(b).

(f) Possess spiny lobster tails separated from the carapace before they have been landed, as specified in § 645.21(c).

(g) Use traps without degradable panels, or use prohibited gear or methods, as specified in § 645.22.

[49 FR 50050, Dec. 26, 1984, as amended at 53 FR 24656, June 29, 1988]

§ 645.8 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 645.9 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

Subpart B—Management Measures

§ 645.20 Harvest limitations.

(a) *Berried lobsters.* (1) Berried spiny lobsters must be returned to the water unharmed. Berried lobsters may be retained in traps or pots as attractants until the eggs are shed provided the traps are returned to the water and not retained on the vessel or landed.

(2) Berried spiny lobsters may not be stripped, scraped, shaved, clipped, or in any other manner molested, in order to remove the eggs.

(b) *Pulling traps.* Traps may be pulled, tended, or opened only aboard the owner's vessel, unless the boat tending another person's traps has on board written consent of the trap owner or the owner is on board with his or her permit. This restriction is not applicable to authorized officers.

§ 645.21 Size limitations.

(a) Spiny lobsters with a carapace length of less than 3.5 inches (89 millimeters) must be returned immediately to the water unharmed.

(b) Spiny lobsters with a carapace length less than the 3.5-inch minimum sized limit may be used as "attractants" in traps or pots, but may not be retained on the vessel or landed.

(c) Spiny lobsters must remain whole prior to landing at shoreside. Tails may not be separated from the carapace before the spiny lobsters have been landed.

§ 645.22 Gear limitations.

(a) *Degradable panel.* All traps or pots used for fishing in the EEZ must contain on any vertical side or on the top an opening no smaller in diameter than the throat or entrance of the trap or pot. The opening may be covered either by degradable netting made of any of the materials listed below, or by a cover made of any material and fastened to the fish trap or pot with any of the materials listed below:

(1) Untreated fiber of biological origin not more than three millimeters (approximately ⅛") maximum diameter; this includes, but is not limited to tyre palm, hemp, jute, cotton, wool or silk.

(2) Non-galvanized black iron wire not more than 1/16 inch (approximately 1.59 millimeters in diameter); that is, 16 gauge wire.

(b) *Prohibited gear or methods.* Spiny lobsters may not be taken with:

(1) Explosives, poisons, drugs or other chemicals; or

(2) Spears, hooks, or similar devices. The possession of a speared, pierced, or punctured spiny lobster is *prima facie* evidence of violation of this section.

[49 FR 50050, Dec. 26, 1984, as amended at 53 FR 24660, June 29, 1988]

§ 645.23 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities that are otherwise prohibited by these regulations.

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

Subpart A—General Provisions

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646.1 Purpose and scope.
646.2 Definitions.
646.3 Relationship to other laws.
646.4 Catch monitoring.
646.5 Vessel and gear identification.
646.6 Prohibitions.
646.7 Facilitation of enforcement.
646.8 Penalties.

Subpart B—Management Measures

646.20 Harvest limitations.
646.21 Size limitations.
646.22 Gear limitations.
646.23 Specifically authorized activities.
646.24 Area limitations.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 48 FR 39466, Aug. 31, 1983, unless otherwise noted.

Subpart A—General Provisions

§ 646.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic prepared by the South Atlantic Fishery Management Council under the Magnuson Act.

(b) This part regulates fishing for fish in the snapper-grouper fishery by fishing vessels within the South Atlantic portion of the (EEZ).

[48 FR 39466, Aug. 31, 1983, as amended at 52 FR 9866, Mar. 27, 1987]

§ 646.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Authorized statistical reporting agent means:

(a) Any person so designated by the Science and Research Director; or

(b) Any person so designated by the head of any Federal or State agency which has entered into an agreement with the Secretary to collect fishery data.

Black sea bass trap means a fish trap that harvests or contains at any time no more than 25 percent by number of fishes in the management unit other than black sea bass.

Commercial fisherman means a person who sells, trades, or barters any part of his or her catch of fish.

Fish in the snapper-grouper species means the following species:

Snappers—Lutjanidae

Black snapper—*Apsilus dentatus*
Queen snapper—*Etelis oculatus*
Mutton snapper—*Lutjanus analis*
Schoolmaster—*Lutjanus apodus*
Blackfin snapper—*Lutjanus buccanella*
Red snapper—*Lutjanus campechanus*
Cubera snapper—*Lutjanus cyanopterus*
Gray snapper—*Lutjanus griseus*
Mahogany snapper—*Lutjanus mahogoni*
Dog snapper—*Lutjanus jocu*
Lane snapper—*Lutjanus synagris*
Silk snapper—*Lutjanus vivanus*
Yellowtail snapper—*Ocyurus chrysurus*
Vermilion snapper—*Rhomboplites aurorubens*

Sea Basses—Serranidae

Bank sea bass—*Centropristis ocyurus*
Rock sea bass—*Centropristis philadelphica*
Black sea bass—*Centropristis striata*

Groupers—Serranidae

Rock hind—*Epinephelus adscensionis*
Graysby—*Epinephelus cruentatus*
Speckled hind—*Epinephelus drummondhayi*
Yellowedge grouper—*Epinephelus flavolimbatus*
Coney—*Epinephelus fulvus*
Red hind—*Epinephelus guttatus*
Jewfish—*Epinephelus itajara*
Red grouper—*Epinephelus morio*
Misty grouper—*Epinephelus mystacinus*
Warsaw grouper—*Epinephelus nigritus*
Snowy grouper—*Epinephelus niveatus*
Nassau grouper—*Epinephelus striatus*
Black grouper—*Mycteroperca bonaci*
Yellowmouth grouper—*Mycteroperca interstitialis*
Gag—*Mycteroperca microlepis*
Scamp—*Mycteroperca phenax*
Tiger grouper—*Mycteroperca tigris*
Yellowfin grouper—*Mycteroperca venenosa*

Porgies—Sparidae

Sheepshead—*Archosargus probatocephalus*
Grass porgy—*Calamus arctifrons*
Jolthead porgy—*Calamus bajonado*
Saucereye porgy—*Calamus calamus*
Whitebone porgy—*Calamus leucosteus*

Knobbed porgy—*Calamus nodosus*
Red porgy—*Pagrus pagrus*
Longspine porgy—*Stenotomus caprinus*
Scup—*Stenotomus chrysops*

Grunts—Haemulidae

Black margate—*Anisotremus surinamensis*
Porkfish—*Anisotremus virginicus*
Margate—*Haemulon album*
Tomtate—*Haemulon aurolineatum*
Smallmouth grunt—*Haemulon chrysargyreum*
French grunt—*Haemulon flavolineatum*
Spanish grunt—*Haemulon macrostomum*
Cottonwick—*Haemulon melanurum*
Sailors choice—*Haemulon parrai*
White grunt—*Haemulon plumieri*
Blue stripe grunt—*Haemulon sciurus*

Tilefishes—Malacanthidae

Blueline tilefish—*Caulolatilus microps*
Tilefish (Golden)—*Lopholatilus chamaeleonticeps*
Sand tilefish—*Malacanthus plumieri*

Triggerfishes—Balistidae

Gray triggerfish—*Balistes capriscus*
Queen triggerfish—*Balistes vetula*
Ocean triggerfish—*Canthidermis sufflamen*

Wrasses—Labridae

Hogfish—*Lachnolaimus maximus*
Puddingwife—*Halichoeres radiatus*

Jacks—Carangidae

Yellow jack—*Caranx bartholomaei*
Blue runner—*Caranx crysos*
Crevalle jack—*Caranx hippos*
Bar jack—*Caranx ruber*
Greater amber jack—*Seriola dumerili*
Almaco jack—*Seriola rivoliana*

Fish trap means any trap and the component parts thereof used for or capable of taking finfish, regardless of the construction material, except those traps historically used in the directed fisheries for crustaceans (blue crab, stone crab, and spiny lobster). Fish trap further means those traps used to fish for black sea bass.

Powerhead means any device with an explosive charge, usually attached to a speargun, spear, pole, or stick, which fires a projectile upon contact.

Regional Director means the Regional Director, or a designee, Southeast Region, NMFS, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702; telephone 813-893-3141.

Science and Research Director means the Science and Research Director, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, telephone 305-361-5761, or a designee.

South Atlantic means that portion of the EEZ along the Atlantic coastal states south of the Viriginia/North Carolina border to the boundary between the Gulf of Mexico and the Atlantic Ocean. The boundary between the Gulf of Mexico and the Atlantic Ocean begins at the intersection of the outer boundary of the EEZ and 83°00 W. longitude, proceeds north to 24°35 N. latitude (Dry Tortugas), east to Marquesas Key, then through the Florida Keys to the mainland.

Total length means distance from the tip of the head (snout) to the furthermost tip of the tail (caudal fin).

[48 FR 39466, Aug. 31, 1983, as amended at 50 FR 38819, Sept. 25, 1985; 52 FR 9865, 9866, Mar. 27, 1987; 53 FR 24655, June 29, 1988; 53 FR 38294, Sept. 30, 1988]

§ 646.3 Relationship to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) These regulations are intended to apply within the EEZ portion of the following National Marine Sanctuaries and National Park unless regulations establishing such Sanctuaries or Park prohibit their application.

(1) Looe Key National Marine Sanctuary (15 CFR Part 937);

(2) Key Largo Coral Reef Marine Sanctuary (15 CFR Part 929);

(3) Biscayne National Park (Title 16 U.S.C. 410gg);

(4) Gray's Reef National Marine Sanctuary (15 CFR Part 938); and

(5) Monitor Marine Sanctuary (15 CFR Part 924).

[48 FR 39466, Aug. 31, 1983, as amended at 52 FR 9866, Mar. 27, 1987; 53 FR 24655, June 29, 1988]

§ 646.4 Catch monitoring.

Data will be collected by authorized statistical reporting agents from a sample of commercial and recreational catch for YPR analysis. Those fishermen and dealers selected by the Science and Research Director must make their fish available for inspection by those agents.

[48 FR 39466, Aug. 31, 1983, as amended at 53 FR 38294, Sept. 30, 1988]

§ 646.5 Vessel and gear identification.

(a) *Applicability.* Fishing vessels from which fish traps, other than black sea bass traps, are deployed in the EEZ are required to obtain a vessel and gear identification number and color code from the Regional Director.

(b) *Application.* (1) An application for a vessel and gear identification number and color code under this part must be signed by the owner or operator of the vessel and submitted on an appropriate form obtained from the Regional Director. Fishermen who have an existing number and color code from another fishery may indicate on the application their preference to use that same identification system for the fish trap fishery. Whenever possible, the Regional Director will reissue the requested number and color code adding only a single letter prefix to indicate that the vessel and gear are engaged in the fish trap fishery. The application must be submitted to the Regional Director 30 days prior to the date on which the applicant desires receipt of the vessel and gear identification number and color code.

(2) Applicants must provide all of the following information:

(i) Name, mailing address including ZIP code, and telephone number of the owner of the vessel;

(ii) Name of the vessel;

(iii) The vessel's official number;

(iv) Home port or principal port of landing, gross tonnage, radio call sign, and length of the vessel;

(v) Engine horsepower and year the vessel was built;

vi) Number, dimensions, and estimated cubic volume of the fish traps that will be fished;

(vii) Any other information concerning vessel and gear characteristics requested by the Regional Director; and

(viii) A statement that the applicant will allow authorized officers reasonable access to his property (vessel and dock) to inventory fish traps for compliance with these regulations.

(3) Any change in the information specified in this paragraph must be submitted in writing to the Regional Director by the applicant within 15 days of any such change. Failure to notify the Regional Director of any change in the required information will result in a rebuttable presumption that the information is still accurate and current.

(c) *Issuance.* The Regional Director will issue a color code, vessel and gear identification number, and fish trap tags imprinted with the vessel and gear identification number to the applicant not later than 30 days from the date of receipt of a completed application.

(d) *Display.* Vessels from which fish traps, other than black sea bass traps, are fished; fish traps; and buoys must display the identification number and color code designated by the Regional Director.

(1) *Vessels.* Vessels must permanently and conspicuously display the identification number and color code designated by the Regional Director under paragraph (c) of this section in a manner so as to be readily identifiable from the air and water.

(i) To be visible from the air, the identification number and color code must be permanently affixed to the uppermost structural portion of the vessel or other similar area. The color code must be in the form of a circle at least 20 inches in diameter, and the areas surrounding the circle must be of a contrasting color. The identification number must be at least 10 inches in height and must be affixed adjacent to the 20-inch diameter circle.

(ii) To be visible from the water, the identification number and color code must be permanently affixed to both starboard and port sides of the vessel near amidships. The color code must be in the form of a circle at least 8 inches in diameter and the area surrounding the circle must be of a contrasting color. The identification number must be at least 4 inches in height and must be affixed adjacent to the 8-inch diameter circle.

(2) *Fish traps.* Each fish trap must have affixed to it permanently the numbered identification tag supplied by the Regional Director.

(3) *Buoys.* The use of buoys to identify fish traps is not required. If buoys are used, they must display the identi-

fication number and color code so as to be easily distinguished, located, and identified. The identification number must be in legible figures at least 2 inches in height and affixed to each buoy.

(e) Fish traps fished in the EEZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to fish traps which are lost or sold if the owner of such traps reports the loss or sale within 15 days to the Regional Director.

(f) Unmarked fish traps deployed in the EEZ, other than black sea bass traps, are illegal and may be disposed of in any appropriate manner by the Secretary (including an authorized officer). If owners of the unmarked trap can be ascertained, those owners remain subject to appropriate civil penalties.

(Approved by the Office of Management and Budget under control number 0048-0097)

[50 FR 38819, Sept. 25, 1985, as amended at 52 FR 9866, Mar. 27, 1987]

§ 646.6 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Refuse to make fish available for inspection when requested to do so by an authorized statistical reporting agent, as specified in § 646.4.

(b) Pull or tend fish traps except during the hours specified in § 646.20.

(c) Tend, open, pull, or otherwise molest or have in one's possession aboard a fishing vessel another persons's fish traps except as provided in §646.20(b).

(d) Possess in or harvest from the EEZ red snapper, yellowtail snapper, red grouper, or Nassau grouper under the minimum size specified in § 646.21(a).

(e) Possess in or harvest from that portion of the EEZ south of 35°15′ N. latitude (Cape Hatteras, North Carolina) black sea bass under the minimum size specified in § 646.21(b).

(f) Possess in the EEZ any fish in the snapper-grouper fishery without the heads and fins intact as specified in § 646.21(c).

(g) Land any fish in the snapper-grouper fishery, taken from the EEZ without the heads and fins intact as specified in § 646.21(c).

(h) Fish for fish in the snapper-grouper fishery with explosives or poisons except as provided in § 646.22(a)(1) and (2).

(i) Fish for fish in the snapper-grouper fishery in the EEZ with trawl nets and fish traps except as specified in §§ 646.20 (a) and (b) or 646.22(b).

(j) Fish with fish traps, except black sea bass traps, without an assigned vessel and gear identification number; possess aboard a fishing vessel unmarked fish traps; use, or possess aboard a fishing vessel, buoys not marked with the assigned gear identification number and color code; falsify or fail to affix and maintain vessel or gear markings as required by § 646.5.

(k) Possess fish traps shoreward of the outer boundary of the EEZ and south of 25°35.5′ N. latitude (Fowey Rocks Light, Florida) except as specified in § 646.22(b)(5).

(l) Fish with any type of fishing gear except hand-held hook-and-line gear or spearfishing gear as specified in § 646.24(b) (1) and (2).

(m) Possess or retain jewfish taken by any type of fishing gear or take any jewfish with spearfishing gear as specified in § 646.24(b) (3).

(n) Fail to release immediately in the water any incidentally caught jewfish as specified in § 646.24(b)(3).

[48 FR 39466, Aug. 31, 1983, as amended at 50 FR 38819, Sept. 25, 1985; 52 FR 9865, 9866, Mar. 27, 1987; 53 FR 24656, June 29, 1988]

§ 646.7 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 646.8 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

Subpart B—Management Measures

§ 646.20 Harvest limitations.

(a) Fish traps may be pulled or tended only during the period beginning one hour before official sunrise to one hour after official sunset in the South Atlantic portion of the FCZ south of 28°24.5′ N. Latitude (Cape Canaveral, Florida).

(b) Fish traps may be tended or pulled only by persons (other than authorized officers) aboard the fish trap owner's vessel(s), or aboard another vessel if such vessel has on board written consent of the fish trap owner.

§ 646.21 Size limitations.

(a) The minimum size limit for the harvest or possession in the EEZ of red snapper, yellowtail snapper, red grouper, and Nassau grouper is 12 inches total length.

(b) The minimum size for the harvest or possession in the EEZ of black sea bass south of Cape Hatteras, North Carolina is 8 inches total length.

(c) All fish in the snapper-grouper fishery subject to minimum size limits specified in this section may be possessed in the EEZ or landed, if harvested from the EEZ, only with the head and fins intact.

[48 FR 39466, Aug. 31, 1983, as amended at 52 FR 9866, Mar. 27, 1987]

§ 646.22 Gear limitations.

(a)(1) Explosives (except explosives in powerheads) may not be used to fish for fish in the snapper-grouper fishery.

(2) Poisons may not be used to fish for fish in the snapper-grouper fishery except as authorized by permit under State or Federal law.

(b)(1) Fish traps are required to have on at least one side, excluding top and bottom, panels or door-hinging devices or door fasteners which will degrade or self-destruct and which must be constructed of one of the following degradable materials:

(i) Untreated hemp, jute, or cotton string of $^{3}/_{16}$-inch diameter or smaller;

(ii) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or

(iii) Ungalvanized or uncoated iron wire of 0.062-inch diameter or smaller.

(iv) The diameter of the panel opening must be equal to or larger than the interior axis of the trap's throat (funnel).

(2) Effective September 28, 1984, fish traps must meet all of the following mesh size requirements:

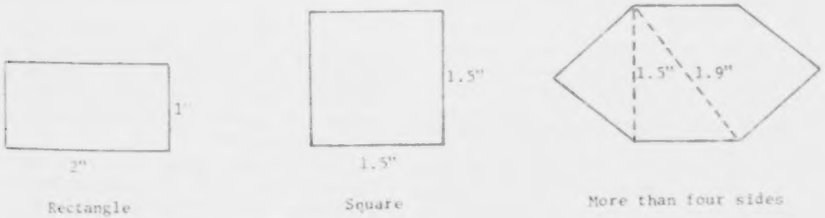
(i) Two square inch minimum open mesh area;

(ii) One-inch minimum length for shortest side;

(iii) Minimum distance of 1-inch between parallel sides of rectangular openings, and one and one-half (1.5) inches between parallel sides of mesh opening with more than four sides; and

(iv) One and nine tenths (1.9) inches minimum distance for diagonal measurement.

Examples of fish trap mesh configurations which meet the minimum requirements are shown in Figure 1.



Rectangle Square More than four sides

Figure 1. Examples of fish trap configurations which meet the minimum mesh sizes (not to scale).

(3) Effective September 28, 1984, trawl nets targeting fish in the snapper-grouper fishery (25 percent or more of the fish on board by weight are fish in the snapper-grouper fishery) must have a minimum stretched mesh size of 4 inches. Shrimp trawls, calico scallop trawls, and rock shrimp trawls are specifically exempt from this requirement.

(4) Fish traps may not be placed shoreward of the 100-foot contour in that portion of the South Atlantic EEZ south of 25°35.5′ N. latitude (Fowey Rocks Light, Florida). Fish traps so deployed will be considered unclaimed or abandoned property and may be disposed of in any appropriate manner by the Secretary (including an authorized officer).

(5) Buoy lines attached to fish traps possessed or fished shoreward to the outer boundary of the EEZ and south of 25°35.5′ N. latitude must be a minimum of 125 feet in length.

[48 FR 39466, Aug. 31, 1983, as amended at 49 FR 33449, Aug. 23, 1984; 50 FR 38820, Sept. 25, 1985; 50 FR 41692, Oct. 15, 1985; 52 FR 9866, Mar. 27, 1987]

§ 646.23 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities which are otherwise prohibited by these regulations.

§ 646.24 Area limitations.

(a) The following artificial reefs and surrounding areas are established as Special Management Zones (SMZs):

(1) *Little River Reef:* The area is bounded by straight lines connecting the following points:

A	33°49.60′ N.,	78°30.51′ W.
B	33°48.95′ N.,	78°31.30′ W.
C	33°48.92′ N.,	78°29.72′ W.
D	33°48.40′ N.,	78°30.50′ W.

(2) *Paradise Reef:* The area is bounded on the north by 33°31.59′ N. latitude; on the south by 33°30.51′ N. latitude; on the east by 78°57.55′ W. longitude; and on the west by 78°58.85′ W. longitude.

(3) *Ten Mile Reef:* The area is bounded on the north by 33°26.65′ N. latitude; on the south by 33°24.80′ N. latitude; on the east by 78°51.08′ W. longitude; and on the west by 78°52.97′ W. longitude.

(4) *Pawleys Island Reef:* The area is bounded on the north by 33°26.58′ N. latitude; on the south by 33°25.76′ N. latitude; on the east by 79°00.29′ W. longitude; and on the west by 79°01.24 W. longitude.

(5) *Georgetown Reef:* The area is bounded on the north by 33°14.90′ N. latitude; on the south by 33°13.85′ N. latitude; on the east by 78°59.45′ W. longitude; and on the west by 79°00.65 W. longitude.

(6) *Capers Reef:* The area is bounded on the north by 32°45.45′ N. latitude on the south by 32°43.91′ N. latitude on the east by 79°33.81′ W. longitude and on the west by 79°35.10′ W. longitude.

(7) *Kiawah Reef:* The area is bounded on the north by 32°29.78′ N. latitude; on the south by 32°28.25′ N. latitude; on the east by 79°59.00′ W. longitude; and on the west by 80°00.95′ W. longitude.

(8) *Edisto Offshore Reef:* The area is bounded on the north by 32°15.30′ N. latitude; on the south by 32°13.90′ N. latitude; on the east by 79°50.25′ W. longitude; and on the west by 79°51.45 W. longitude.

(9) *Hunting Island Reef:* The area is bounded on the north by 32°13.72′ N. latitude; on the south by 32°12.30′ N. latitude; on the east by 80°19.23′ W. longitude; and on the west by 80°21.00 W. longitude.

(10) *Fripp Island Reef:* The area is bounded on the north by 32°15.92′ N. latitude; on the south by 32°14.75′ N. latitude; on the east by 80°21.62′ W. longitude; and on the west by 80°22.90 W. longitude.

(11) *Betsy Ross Reef:* The area is bounded on the north by 32°03.60′ N. latitude; on the south by 32°02.88′ N. latitude; on the east by 80°24.57′ W. longitude; and on the west by 80°25.50 W. longitude.

(12) *Hilton Head Reef/Artificial Reef—T:* The area is bounded on the north by 32°00.71′ N. latitude; on the south by 31°59.42′ N. latitude; on the east by 80°35.23′ W. longitude; and on the west by 80°36.37′ W. longitude.

(13) *Artificial Reef—A:* The area is bounded on the north by 30°56.4′ N. latitude; on the south by 30°55.2′ N. latitude; on the east by 81°15.4′ W. lon-

gitude; and on the west by 81°16.5′ W. longitude.

(14) *Artificial Reef—C:* The area is bounded on the north by 30°51.4′ N. latitude; on the south by 30°50.1′ N. latitude; on the east by 81°09.1′ W. longitude; and on the west by 81°10.4′ W. longitude.

(15) *Artificial Reef—G:* The area is bounded on the north by 30°59.1′ N. latitude; on the south by 30°57.8′ N. latitude; on the east by 80°57.7′ W. longitude; and on the west by 80°59.2′ W. longitude.

(16) *Artificial Reef—F:* The area is bounded on the north by 31°06.6′ N. latitude; on the south by 31°05.6′ N. latitude; on the east by 81°11.4′ W. longitude; and on the west by 81°13.3′ W. longitude.

(17) *Artificial Reef—J:* The area is bounded on the north by 31°36.7′ N. latitude; on the south by 31°35.7′ N. latitude; on the east by 80°47.0′ W. longitude; and on the west by 80°48.1′ W. longitude.

(18) *Artificial Reef—L:* The area is bounded on the north by 31°46.2′ N. latitude; on the south by 31°45.1′ N. latitude; on the east by 80°35.8′ W. longitude; and on the west by 80°37.1′ W. longitude.

(19) *Artificial Reef—KC:* The area is bounded on the north by 31°51.2′ N. latitude; on the south by 31°50.3′ N. latitude; on the east by 80°46.0′ W. longitude; and on the west by 80°47.2′ W. longitude.

(b) The following restrictions apply within the SMZs.

(1) Fishing may be conducted only with hand-held hook-and-line gear (including manual, electric, or hydraulic rod and reel) and spearfishing gear (including powerheads).

(2) The use of fish traps, bottom longlines, gill nets, and trawls is prohibited.

(3) Jewfish may not be harvested by any type of gear. Jewfish taken incidentally by hook-and-line gear must be released immediately by cutting the line without removing the fish from the water.

[52 FR 9866, Mar. 27, 1987]

PART 649—AMERICAN LOBSTER FISHERY

Subpart A—General Provisions

Sec.

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649.3 Relation to other laws.
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649.20 Harvesting and landing requirements.
649.21 Gear identification, marking, and escape vent requirements.
649.22 Exemption and area closure.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 649.1 Purpose and scope.

This part implements the American Lobster Fishery Management Plan prepared and adopted by the New England Fishery Management Council in consultation with the Mid-Atlantic Fishery Management Council, and approved by the Director of the Northeast Region of the National Marine Fisheries Service, NOAA. These regulations govern fishing for American lobster within that portion of the Atlantic Ocean over which the United States exercises fishery management authority, and possession of American lobster and lobster traps. Red crab fishing gear which is fished deeper than 200 fathoms is gear not capable of taking lobsters, and is not subject to the provisions of these regulations.

[48 FR 36268, Aug. 10, 1983, as amended at 51 FR 19212, May 28, 1986]

§ 649.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

American lobster or *lobster* means the species *Homarus americanus*.

Berried female means a female lobster bearing eggs attached to the abdominal appendages.

Carapace length is the straight line measurement from the rear of the eye socket parallel to the center line of the carapace to the posterior edge of the carapace. The carapace is the unsegmented body shell of the lobster.

Council includes the New England and Mid-Atlantic Fishery Management Councils.

Fishery management plan (FMP) means the American Lobster Fishery Management Plan and any amendments thereto.

Land means to begin offloading fish, to offload fish, or to arrive in port.

Regional Director means the Director, Northeast Region, National Marine Fisheries Service, NOAA, or a designee.

Scrubbing is the forcible removal of eggs from a berried female lobster.

Sixth tail segment is that tail segment closest to the fan of the lobster's tail with the segment length measured along the dorsal center line with the tail flexed.

V-notched lobster means any lobster bearing a V-shaped notch in the right flipper next to the middle flipper or any female lobster which is mutilated in a manner which could hide or obliterate such a mark. The right flipper will be examined when the underside of the lobster is down and its tail is toward the person making the determination.

Whole lobster means a lobster with an intact and measurable body (tail and carapace). A whole lobster may have one or both claws missing.

[48 FR 36268, Aug. 10, 1983, as amended at 52 FR 46091, Dec. 4, 1987; 53 FR 24655, June 29, 1988]

§ 649.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) Nothing in these regulations will supersede more restrictive State or local lobster management measures.

[48 FR 36268, Aug. 10, 1983, as amended at 53 FR 24655, June 29, 1988]

§ 649.4 Vessel permits.

(a) *General.* (1) Any vessel of the United States fishing for American lobster in the EEZ must have a permit required by this part on board the vessel. The Regional Director may by agreement with State agencies recognize permits or licenses issued by those agencies endorsed for fishing for lobster in the EEZ, providing that such permitting programs accurately identify persons who fish in the EEZ, and that the Regional Director can either individually or in concert with the State agency act to suspend the permit or license for EEZ fishing for any violation under this part.

(2) Alternate State EEZ permitting programs will be established through a letter of agreement between the Regional Director and the director of the State marine fisheries agency concerned. The letter of agreement will specify the information to be collected by the alternate EEZ permitting program and the mode and frequency of provision of that information to the Regional Director. The Regional Director will, in cooperation with the State director, arrange for notification of the existence and terms of any such agreements to the affected persons. Persons intending to fish in the EEZ should determine whether an alternate EEZ permitting program is in force for their State before applying for a Federal permit under § 649.4(b).

(3) Vessel owners or operators who apply for a fishing vessel permit under this section, or for a State permit endorsed for EEZ fishing under § 649.4(a)(2) must agree, as a condition of the permit, that all the vessels' lobster fishing, catch, and gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such lobster, lobster meats, or parts, or gear are possessed, taken or landed) will be subject to all the requirements of this part. All such fishing, catch, and gear will remain subject to any applicable State or local requirements. If a requirement of this part and a conservation measure required by State or local law differ, any vessel owner or operator permitted to fish in the EEZ

must comply with the more restrictive requirement.

(b) *Application.* An application for a federally issued fishing vessel permit under this section must be submitted and signed by the vessel owner or operator on an appropriate form which may be obtained from the Regional Director. The application must be submitted to the Regional Director and must contain the following information:

(1) The name, mailing address, and telephone number of the applicant and the vessel's master;

(2) The name of the vessel;

(3) The vessel's official number;

(4) The home port, length, gross tonnage, and net tonnage of the vessel;

(5) The engine horsepower of the vessel;

(6) The approximate fish-hold capacity of the vessel;

(7) The type, and quantity of fishing gear used by the vessel;

(8) The size of the crew, which may be stated in terms of a range; and

(9) A signed statement that the applicant agrees to the conditions specified in § 649.4(a)(3), i.e. that all the vessel's fishing, catch, and gear, of American lobster will be subject to the requirements of this part, in addition to any more restrictive conservation requirements of applicable State or local rules, without regard to where such fishing, catch, or gear occur, is taken, or is possessed.

(c) *Issuance.* (1) Except as provided in Subpart D of 15 CFR Part 904, the Regional Director will issue a permit within 30 days.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 10 days following the date of notification, the application will be considered abandoned.

(d) *Expiration.* A permit expires on December 31, or when the owner or name of the vessel changes.

(e) *Duration.* A federally issued permit is valid until it expires or is revoked, suspended, or modified under Subpart D of 15 CFR Part 904.

(f) *Alteration.* Any permit which has been altered, erased, or mutilated is invalid.

(g) *Replacement.* Replacement permits may be issued. An application for a replacement permit will not be considered a new application.

(h) *Transfer.* Federal permits issued under this part are not transferable or assignable. A federally issued permit is valid only for the vessel for which it is issued.

(i) *Display.* Any permit issued under this part must be carried on board the fishing vessel at all times. The permit must be displayed for inspection upon request of any authorized officer.

(j) *Sanctions.* Subpart D of 15 CFR Part 904 governs the imposition of sanctions against a permit issued under this part. Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

(k) *Fees.* No fee is required for any federally-issued permit under this part.

(l) *Change in application information.* The permit holder must report any change in the information specified in paragraph (b) of this section, such as the vesssel owner or quantity of gear, to the Regional Director within 15 days of the change.

[48 FR 36268, Aug. 10, 1983, as amended at 49 FR 1043, Jan. 6, 1984; 52 FR 46091, Dec. 4, 1987]

§ 649.5 Recordkeeping and reporting. [Reserved]

[53 FR 24656, June 29, 1988]

§ 649.6 Vessel indentification.

(a) *Official number.* Each fishing vessel subject to this part over 25 feet in length must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from above.

(b) *Numerals.* The official number must be permanently affixed to each vessel subject to this part in contrasting block Arabic numerals at least 18 inches in height for all other vessels over 65 feet, and at least 10 inches in height for all other vessels over 25 feet in length. The length of a vessel, for purposes of this section, is that length set forth in U.S. Coast Guard or State records.

(c) *Duties of operator.* The operator of each vessel subject to this part must—

(1) Keep the vessel name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

[48 FR 36268, Aug. 10, 1983]

§ 649.7 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person issued a permit under § 649.4, or for any person fishing in the EEZ, to do any of the following:

(1) Land or possess any American lobster which fails to meet the carapace length standards specified in § 649.20(b).

(2) Land or possess any American lobster or parts thereof in violation of the mutilation standards specified in §649.20(c).

(3) Retain on board, possess, or land any berried female American lobster.

(4) Remove eggs from any berried female American lobster, or to possess or land any such lobster from which eggs have been removed.

(5) Possess any V-notched female American lobsters throughout the range of the stock.

(6) Possess, deploy, haul, harvest lobster from, or carry aboard a vessel any gear not identified, marked and vented in accordance with the requirements specified in § 649.21.

(7) Fail to affix and maintain permanent markings as required by § 649.6.

(b) It is unlawful for any person to do any of the following:

(1) Use any vessel for taking, catching, harvesting, fishing for, or landing of any American lobster in, or from, the EEZ unless the vessel or operator has a valid permit issued under this part, and the permit is aboard the vessel.

(2) Make any false statement in connection with an application under § 649.4; or to fail to report to the Regional Director, within 15 days, any change in the information contained in a permit application for a vessel.

(3) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, import or export any American lobster taken or retained in violation of the Magnuson Act, this part, or any other regulation under the Magnuson Act.

(4) Make any false statement, oral or written, to an authorized officer, concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any American lobster.

(5) Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search in the process of enforcing this part.

(c) The possession of egg-bearing female American lobsters, V-notched female American lobsters, or American lobsters that are smaller than the minimum size set forth in § 649.20(b) of this part, will be *prima facie* evidence that such lobsters were taken or imported in violation of these regulations. Evidence that such lobsters were harvested by a vessel not holding a permit under this part and fishing exclusively within State or foreign waters will be sufficient to rebut the presumption.

[48 FR 36268, Aug. 10, 1983, as amended at 51 FR 19212, May 28, 1986; 52 FR 4609 Dec. 4, 1987; 53 FR 24656, June 29, 1988]

§ 649.8 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 649.9 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

Subpart B—Management Measures

§ 649.20 Harvesting and landing requirements.

(a) *Condition.* By accepting a Federal permit or a State permit endorsed for EEZ fishing, the permittee agrees that any lobster found on board or landed by a vessel with a permit issued, authorized, or required by this part will be treated as if it had been harvested in the EEZ subject to these regulations.

(b) *Carapace length.* All American lobsters landed on the dates set forth must have a minimum carapace length as follows:

Effective Dates and Minimum Carapace Length

January 1, 1985, through December 31, 1987: $3\frac{3}{16}$ inches
January 1, 1988, through December 31, 1988: $3\frac{7}{32}$ inches
January 1, 1989, through December 31, 1990: [1] $3\frac{1}{4}$ inches
January 1, 1991, through December 31, 1991: $3\frac{9}{32}$ inches
January 1, 1992, and beyond: $3\frac{5}{16}$ inches

[1] By January 1, 1990, escape vents in traps must be compatible with a minimum carapace length of $3\frac{5}{16}$ inches.

(c) *Mutilation.* It is unlawful for any person to remove meat or any body appendages from any lobster before landing, or to have in possession on board any lobster part other than whole lobsters.

(d) *Berried females.* Any berried female American lobster must be immediately returned to the sea.

(e) *Scrubbing.* No person may remove extruded eggs attached to the abdominal appendages from any female American lobster.

[48 FR 36268, Aug. 10, 1983, as amended at 52 FR 46091, Dec. 4, 1987]

§ 649.21 Gear identification, marking, and escape vent requirements.

(a) *Identification.* All lobster gear deployed in the EEZ or possessed by a person whose vessel is permitted for fishing in the EEZ, and not permanently attached to the vessel, must be legibly and indelibly marked with one of the following codes of identification:

(1) A number assigned by the Regional Director; and/or

(2) Whatever positive identification marking is required by the vessel's homeport State.

(b) *Marking.* In the areas of the EEZ described in paragraph (b)(4) below, lobster pot trawls are to be marked as follows:

(1) Lobster pot trawls of three or less pots must be marked with a single buoy.

(2) Lobster pot trawls consisting of more than three pots must have a radar reflector and a single flag or pennant on the westernmost end (marking the half compass circle from magnetic south through west to and including north), while the easternmost end (meaning the half compass circle from magnetic north through east to and including south) of a lobster trawl must be marked with a radar reflector only. Standard tetrahedral corner radar reflectors (see Figure 1) of at least 8 inches (both in height and width and made from metal) must be employed.

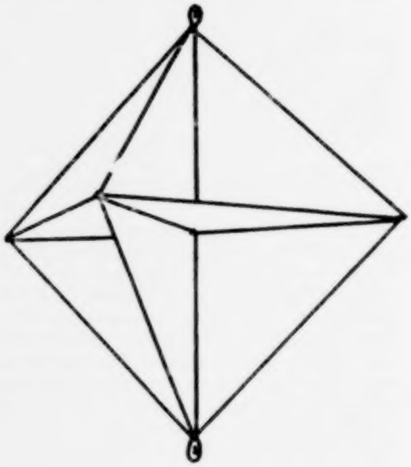

Figure 1

(3) No lobster pot trawl shall exceed 1.5 miles in length as measured from buoy to buoy.

(4) Gear marking requirements apply in the following areas:

(i) *Gulf of Maine Gear Area.* All waters of the EEZ north of 42°20′ N. latitude seaward of a line drawn 12 miles from the baseline of the territorial sea;

(ii) *Georges Bank Gear Area.* All waters of the EEZ south of 42°20′ N. latitude and east of 70°00′ W. longitude or the outer boundary of the territorial sea, whichever lies further east;

(iii) *Southern New England Gear Area.* All waters of the EEZ west of

70°00′ W. longitude, east of 71°30′ W. longitude at a depth greater than 25 fathoms; and

(iv) *Mid-Atlantic Gear Area.* All waters of the EEZ, west of 71°30′ W. longitude and north of 36°33′ N. latitude at a depth greater than 40 fathoms.

(c) *Escape vents.* (1) Until January 1, 1990, all lobster traps deployed in the EEZ or possessed by a person whose vessel is permitted for fishing in the EEZ must be constructed to include one of the following escape vents in the parlor section of the trap. The vent must be located in such a manner that it would not be blocked or obstructed by any portion of the trap, associated gear, or the sea floor in normal use.

(i) A rectangular portal with an unobstructed opening not less than 1¾ inches (44.5 mm) by six inches (152.5 mm);

(ii) Two circular portals with unobstructed openings not less than 2¼ inches (57.2 mm) in diameter; or

(iii) Any other vent certified by the Regional Director to release a substantial number of lobsters under $3\frac{5}{16}$ inches carapace length from the trap.

(2) On January 1, 1990, rectangular or circular escape vents compatible with a minimum carapace length of $3\frac{5}{16}$ inches will be required.

(d) *Enforcement action.* (1) Unidentified, unmarked, unvented, or improperly vented lobster traps will be seized and disposed of in accordance with the provisions of 50 CFR Part 219.

(2) Following the effective date of each carapace length increase set forth in § 649.20(b) of this part, any dealer/ wholesaler will have 180 days in which to dispose of any lobsters purchased or received in the prior year which do not meet the new minimum carapace length increase.

[51 FR 19212, May 28, 1986; 51 FR 22940, June 24, 1986, as amended at 52 FR 46091, Dec. 4, 1987]

§ 649.22 Exemption and area closure.

(a) *Exemption.* (1) Upon the recommendation of the New England Fishery Management Council, the Regional Director may exempt any person or vessel from the requirements of this part for the conduct of research or education beneficial to the lobster resource or lobster fishery.

(2) The Regional Director may not grant such exemption unless he determines that the purpose, design and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson Act and other applicable law, and that granting the exemption will not—

(i) Have a detrimental effect on the lobster resource and fishery; or

(ii) Create significant enforcement problems.

(3) Each vessel participating in any exempt activity is subject to all provisions of this part except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption.

(b) *Area closure.* (1) Upon the recommendation of the New England Fishery Management Council, the Regional Director may close an area of the EEZ to fishing, through a regulatory amendment, for the conduct of scientific research provided that such closure will not—

(i) Increase gear conflicts; or

(ii) Interfere significantly with common fishing practices.

(2) If the area to be closed is within the jurisdiction of the Mid-Atlantic Fishery Management Council, then that Council must concur with the recommendation of the New England Fishery Management Council before the Regional Director may close the area.

[51 FR 19212, May 28, 1986, as amended at 52 FR 46091, Dec. 4, 1987; 53 FR 24657, June 29, 1988]

PART 650—ATLANTIC SEA SCALLOP FISHERY

Subpart A—General Provisions

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650.3 Relation to other laws.
650.4 Vessel permits.
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Subpart B—Management Measures

650.20 Meat-count and shell-height standards.
650.21 Compliance and sampling procedures.
650.22 Review of resource status; temporary adjustment of standards.
650.23 Experimental fishing exemption.
650.24 Modification of the spawning season adjustment.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 650.1 Purpose and scope.

The purpose of this part is to implement the Fishery Management Plan for Atlantic Sea Scallops, prepared and adopted by the New England Fishery Management Council in consultation with the Mid-Atlantic and South Atlantic Fishery Management Councils, and approved by the Assistant Administrator for Fisheries (NOAA). These regulations govern fishing for Atlantic sea scallops within that portion of the Atlantic ocean over which the United States exercises fishery management authority.

[47 FR 35992, Aug. 18, 1982, as amended at 50 FR 46071, Nov. 6, 1985; 52 FR 1463, Jan. 14, 1987]

§ 650.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Atlantic sea scallop or *scallop* means the species *Placopecten magellanicus* throughout its range.

Council means the New England Fishery Management Council.

First transaction in the United States means the time and place at which Atlantic sea scallops.

(a) After being landed in the United States in the shell, are shucked;

(b) After being landed in the United States shucked, are mixed, sorted, or processed in any way; or

(c) Are certified, through a procedure specified by the Regional Director, to have been taken under a management system which the Regional Director finds to be substantially consistent with the conservation objectives of the FMP and these regulations.

Fishery Management Plan (FMP) means the Fishery Management Plan for Atlantic Sea Scallops and any amendments thereto.

Land means to begin offloading fish, to offload fish, or to enter port with fish.

Meat means the retained part of the scallop adductor muscle.

Meat count means the number of scallop meats required to make one pound of meats. A meat count of thirty means that one pound of scallops contains thirty meats. As the average scallop size increases, the meat count declines.

Non-conforming Atlantic sea scallops means scallops which do not meet the standards specified in § 650.20 of these regulations, unless such scallops have been certified (through a procedure specified by the Regional Director) to have been taken under a management system which the Regional Director finds to be substantially consistent with the conservation objectives of the FMP and these regulations.

Regional Director means the Regional Director, Northeast Region, National Marine Fisheries Service, NOAA, or a designee.

Shell height is a straight line measurement from the umbo on the hinge, or anterior wing of the shell, to the outermost part of the curve of the leading edge.

Shucking or *to shuck* means opening scallops and separating the meat from the shell.

Trip is the period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel begins to offload fish in port.

[47 FR 35992, Aug. 18, 1982, as amended at 50 FR 46071, Nov. 6, 1985; 52 FR 1463, Jan. 14, 1987; 53 FR 23636, June 23, 1988; 53 FR 24655, June 29, 1988]

§ 650.3 Relation to other laws.

The relation of this part to other laws is set forth in § 620.3 of this chapter.

[53 FR 24655, June 29, 1988]

§ 650.4 Vessel permits.

(a) *General.* Any vessel of the United States harvesting Atlantic sea scallops in quantities greater than 5 bushels in the shell or 40 pounds of meats per trip shall have a permit required by this part on board the vessel.

(b) *Application.* An application for a fishing vessel permit under this section shall be submitted and signed by the vessel owner on an appropriate form which may be obtained from the Regional Director. The application shall be submitted to the Regional Director and shall contain the

(1) The name, mailing address, and telephone number of the applicant and the vessel's master;

(2) The name of the vessel;

(3) The vessel's official number;

(4) The home port, gross tonnage, and net tonnage of the vessel;

(5) The engine horsepower of the vessel;

(6) The approximate fish-hold capacity of the vessel in pounds of meats or unshucked scallops as appropriate;

(7) The type, quantity and size of fishing gear used by the vessel, including a statement as to whether all scallops harvested will be shucked at sea, or a portion of the catch will be landed in the shell; and

(8) The size of the crew, which may be stated in terms of a range.

(c) *Issuance.* (1) Except as provided in Subpart D of 15 CFR Part 904, upon receipt of a completed application, the Regional Director must issue a permit within 30 days.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within ten days following the date of notification, the application must be considered abandoned.

(d) *Expiration.* A permit expires on December 31, or when the owner or name of the vessel changes.

(e) *Duration.* A permit is valid until it expires or is revoked, suspended, or modified pursuant to Subpart D of 15 CFR Part 904.

(f) *Alteration.* Any permit which has been altered, erased, or mutilated is invalid.

(g) *Replacement.* Replacement permits may be issued. An application for a replacement permit will not be considered a new application.

(h) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the vessel for which it is issued.

(i) *Display.* Any permit issued under this part must be carried on board the fishing vessel at all times. The permit must be prominently displayed in the pilot house or offered for inspection upon request of any Authorized Officer.

(j) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

(k) *Fees.* No fee is required for any permit under this part.

(l) *Change in application information.* Any change in the information specified in paragraph (b) of this section, such as the vessel owner or gear configuation, must be reported to the Regional Director within 15 days of the change.

[47 FR 35992, Aug. 18, 1982, as amended at 48 FR 34762, Aug. 1, 1983; 49 FR 1043, Jan. 6, 1984; 52 FR 46485, Dec. 8, 1987]

§ 650.5 Recordkeeping and reporting. [Reserved]

[53 FR 24656, June 29, 1988]

§ 650.6 Vessel identification.

(a) *Official number.* Each fishing vessel subject to this part over 25 feet in length must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from above.

(b) *Numerals.* The official number must be permanently affixed to each vessel subject to this part. Numbers must contrast with the background and be in block Arabic numerals at least 18 inches in height for vessels over 65 feet, and at least 10 inches in height for all other vessels over 25 feet in length. The length of a vessel, for purposes of this section, is that length set forth in U.S. Coast Guard or state records.

(c) *Duties of operator.* The operator of each vessel subject to this part shall:

(1) Keep the vessel name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

[47 FR 35992, Aug. 18, 1982]

§ 650.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Possess, at or prior to the first transaction in the United States, any non-conforming Atlantic sea scallops. All Atlantic sea scallops will be subject to inspection and enforcement for non-conformity, in accordance with the compliance and sampling procedures specified in § 650.21, up to and including the first transaction in the United States.

(b) Use any vessel for taking, catching, harvesting, or landing any Atlantic sea scallops in excess of the amounts prescribed in § 650.4(a), unless the vessel has a valid permit issued under this part, and the permit is on board the vessel.

(c) Make any false statement in connection with an application under § 650.4, or to fail to report to the Regional Director, within 15 days, any change in the information contained in a permit application for a vessel.

(d) Fail to affix and maintain permanent markings as required by § 650.6.

(e) Make any false statement, oral or written, to an Authorized Officer, concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any Atlantic sea scallops.

(f) Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search in the process of enforcing this part.

[47 FR 35992, Aug. 18, 1982, as amended at 52 FR 1463, Jan 14, 1987; 53 FR 24657, June 29, 1988]

§ 650.8 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 650.9 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

Subpart B—Management Measures

§ 650.20 Meat-count and shell-height standards.

(a) Except as provided in paragraph (b) and (c) of this section, the meat count for shucked Atlantic sea scallops must not exceed 30 meats per pound; the corresponding minimum shell height is 3½ inches (89 mm).

(b) The Regional Director may temporarily adjust the meat count and shell height standards in accordance with the procedures and criteria provided in § 650.22.

(c)(1) The meat count standard in paragraph (a) of this section will be adjusted upward by 10 percent during the months of October through January each year.

(2) The adjustment of the meat count standard specified in paragraph (c)(1) of this section is made to account for the natural reduction of meat weight during and after the spawning season. The corresponding minimum shell height will not be adjusted.

(3) The Regional Director may act to modify the adjustment to the meat count standard during the spawning period, as set forth in the procedures and criteria of § 650.24. Any modification will become the operative spawning adjustment for purposes of paragraph (c)(1) of this section for succeeding years unless it is further modified according to § 650.24.

[52 FR 1463, Jan. 14, 1987, as amended at 53 FR 23636, June 23, 1988]

§ 650.21 Compliance and sampling procedures.

Compliance with the specified meat-count and shell-height standards will be determined by inspection and enforcement up to and including the first transaction in the United States as follows:

(a) *Shucked meats.* The Authorized Officer will take one-pound samples at random from the total amount of scallops in possession. The person in possession of the scallops may request that as many as ten one-pound samples be examined as a sample group. A sample group fails to comply with the standard if the averaged meat count for the entire sample group exceeds the standard. The total amount of scallops in possession will be presumed in violation of this regulation if the sample group fails to comply with the standard.

(b) *Scallops in the shell.* The Authorized Officer will take samples of forty scallops each at random from the total amount of scallops in possession. The person in possesion of the scallops may request that as many as ten samples (400 scallops) be examined as a sample group. A sample group fails to comply with the standard if more than ten percent of the number of scallops in the sample group are less than the shell height specified by the standard. The total amount of scallops in possession will be presumed in violation of this regulation and subject to forfeiture if the sample group fails to comply with the standard.

[52 FR 1463, Jan. 14, 1987]

§ 650.22 Review of resource status; temporary adjustment of standards.

(a) *Review of resource status.* The Regional Director will review the status of the Atlantic sea scallop resource on a continuing basis, and will, at least annually, prepare a report concerning the status of the fishery and possible changes in the resource, fishery, or industry which might require adjustment of the managment program, or amendment of the FMP. The Council may, at any time, request that such a report be prepared within sixty days.

(b) *Temporary adjustment of standards.* (1) The Regional Director may recommend that the standards contained in § 650.20 be adjusted, if he makes the finding required by paragraph (c) of this section after considering the information specified in paragraph (d) of this section.

(2) The standards can be adjusted only within a range from 25 to 40 meats per pound (with appropriate and consistent shell height adjustment), and may be adjusted by no more than 5 meats per pound by any one adjustment.

(3) The Regional Director will solicit and consider any recommendation of the Council regarding adjustment of standards, and, with the Council, will provide for public notice and comment, and hold a public hearing on the recommendation in conjunction with the Council meeting at which the recommenation is discussed.

(4) The Regional Director may modify his recommendation on the basis of comments from the Council or the public. After consideration of the full record, the Regional Director may adjust the stanadards contained in § 650.20, and will publish in the FEDERAL REGISTER notice of such change and the date when the adjusted standard will revert to a 30 meat count. Notice of any such adjustment will be mailed to each holder of a permit issued under § 650.4.

(5) Adjustments of the meat count and shell height standards may remain in effect for up to twelve months. No later than twelve months after the implementation of the most recent adjustment to the meat count and shell height standards, the Regional Director must review such adjustments. The Regional Director may renew the adjustment upon making a finding consistent with § 650.22(c).

(c) *Criteria.* The Regional Director may adjust the standards specified in § 650.20 if he finds that:

(1) The objective of the FMP would be achieved more readily, or would be better served through an adjustment of the prevailing standards;

(2) The recommended alteration in the standards would not reduce expected catch over the following year by more than 5 percent from that which would have been expected under the prevailing standard;

(3) The recommended standards for meat count and shell height are consistent with each other; and

(4) Inconsistencies exist in the management measures applied to sea scallop stocks in areas harvested by both

domestic and foreign fishermen, and those inconsistencies provide foreign fishermen with an advantage over domestic fishermen which can be demonstrated to adversely affect the domestic fishery; or analysis of the size distribution of sea scallops shows that more than 50 percent of the harvestable sea sallop biomass is at sizes smaller than those consistent with the prevailing standards and that a temporary relaxation of the standards would not jeopardize future recruitment to the fishery.

(d) *Sources of information.* The Regional Director will consider all available resource and assessment information, especially the most recently completed survey and assessment, when preparing any report or recommendation under this section. The Regional Director will also consider: reports and records maintained by fishermen and made available as a part of the fishery statistics program; other fishery statistics; and any other available information which increases understanding of prevailing conditions of the stock, the fishery, and the industry.

[52 FR 1464, Jan. 14, 1987; 52 FR 39537, Oct. 22, 1987]

§ 650.23 Experimental fishing exemption.

(a) Upon the recommendation of the Council, the Regional Director may exempt any person or vessel from the requirements of this part for the conduct of experimental fishing beneficial to the management of the sea scallop resource or fishery.

(b) The Regional Director may not grant such exemption unless it is determined that the purpose, design, and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not

(1) Have a detrimental effect on the sea scallop resource and fishery; or

(2) Create significant enforcement problems.

(c) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of this part except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption.

[52 FR 1464, Jan. 14, 1987]

§ 650.24 Modification of the spawning season adjustment.

(a) *Procedure.* (1) The Council may request that the Regional Director modify the spawning season adjustment as specified in § 650.20(c)(3), if he makes the findings required by paragraph (b) of this section after considering the information specified in paragraph (c) of this section.

(2) A modification to the spawning season adjustment may not exceed 30 percent of the meat count established under § 650.20(a) and is limited to a time period of up to 6 months beginning no earlier than September 1.

(3) Following a request by the Council for a modification, the Regional Director will:

(i) Provide for public input by holding a hearing in conjunction with a Council meeting at which the matter is discussed; and

(ii) Take into consideration public comments and information regarding the enforcement and administrative implications of any modification.

(4) After consideration of the full record required by this section, the Regional Director may modify the spawning adjustment under this section by publishing a notice in the FEDERAL REGISTER.

(b) *Criteria.* The Regional Director must find that:

(1) New scientific information exists that is significantly different from the information contained in the FMP respecting sea scallop growth and/or spawning activity;

(2) The proposed adjustment is within the ranges of period, starting date, and magnitude set forth in paragraph (a)(2) of this section; and

(3) The proposed adjustment is consistent with the management objectives of the FMP.

(c) *Sources of information.* The Regional Director will consider all available resource and assessment information, especially the most recently completed NMFS resource survey and assessment, when preparing any report or recommendation under this section. He will also consider reports and records maintained by fishermen and made available as a part of the fishery statistics program, other fishery statistics, and any other available information which improves understanding of prevailing conditions of the stock, the fishery, and the industry.

[53 FR 23636, June 23, 1988]

PART 651—NORTHEAST MULTISPECIES FISHERY

Subpart A—General Provisions

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AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 52 FR 35094, Sept. 17, 1987, unless otherwise noted.

Subpart A—General Provisions

§ 651.1 Purpose and scope.

This part implements the Fishery Management Plan for the Northeast Multispecies Fishery, as amended by the New England Fishery Management Council in consultation with the Mid-Atlantic Fishery Management Council. These regulations govern the conservation and management of multispecies finfish.

§ 651.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Bottom-tending gill net means any gill net, anchored or otherwise, that is fished on or near the bottom in the lower third of the water column.

Butterfish means *Peprilus triacanthus.*

Charter and party boats means vessels carrying recreational fishing parties for a per capita fee or for a charter fee.

Exempted fisheries means those species found in the exempted fisheries program (§ 651.23).

Herring means Atlantic herring, *Clupea harengus harengus,* or blueback herring, *Alosa aestivalis.*

Land means to begin offloading fish, to offload fish, or to transfer fish to another vessel.

Longline gear means fishing gear which is set horizontally, either anchored, floating, or attached to a vessel, which consists of a main or ground line with three or more gangions and hooks.

Mackerel means Atlantic mackerel, *Scomber scombrus.*

Mid-Atlantic area means that area west and south of a line commencing at 41°18′16.2″ N. latitude, 71°54′28.5″ W. longitude and proceeding 142°37′27.25″ True to the point of intersection with the outer boundary of the EEZ.

Midwater trawl gear means pelagic trawl gear, no portion of which is operated in contact with the bottom at any time.

Multispecies finfish includes, but is not limited to, the following finfish in the Northeast portion of the Atlantic Ocean EEZ.

Gadus morhua	Atlantic cod
Glyptocephalus cynoglossus	witch flounder
Hippoglossoides platessoides	American plaice
Limanda ferruginea	yellowtail flounder
Melanogrammus aeglefinus	haddock
Pollachius virens	pollock
Pseudopleuronectes americanus	winter flounder
Scophthalmus aquosus	windowpane flounder

Sebastes marinus	redfish.
Urophycis tenuis	white hake.

New England area means that area east and north of a line commencing at 41°18′16.2″ N. latitude, 71°54′28.5″ W. longitude and proceeding 142°37′27.25″ True to the point of intersection with the outer boundary of the EEZ.

Recreational fishing means fishing for finfish which does not result in their barter, trade, or sale.

Recreational fishing vessel means any vessel from which no fishing other than recreational fishing is conducted. Party and charter boats are not considered recreational fishing vessels.

Regional Director means the Regional Director, Northeast Region, NMFS, 14 Elm Street, Federal Building, Gloucester, MA 01930, 617-281-3600, or a designee.

Regulated species means a subset of multispecies finfish which includes Atlantic cod, witch flounder, American plaice, yellowtail flounder, haddock, pollock, winter flounder, and redfish.

Retain aboard means to fail to return fish to the sea after a reasonable opportunity to sort the catch.

Squids means *Loligo pealei* or *Illex illecebrosus.*

Whiting means *Merluccius bilinearis.*

[52 FR 35094, Sept. 17, 1987, as amended at 53 FR 24655, June 29, 1988]

§ 651.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraphs (b) and (c) of this section.

(b) Fishing for squids, mackerel, and butterfish, which is affected by these rules, also is governed by other domestic rules under 50 CFR Part 655.

(c) Nothing in these regulations will supersede more restrictive State management measures for multispecies finfish.

[52 FR 35094, Sept. 17, 1987; 52 FR 37159, Oct. 5, 1987, as amended at 53 FR 24655, June 29, 1988]

§ 651.4 Vessel permits.

(a) *General.* (1) Any vessel of the United States fishing for multispecies finfish, except commercial vessels fishing exclusively within State waters and recreational fishing vessels, must have a permit required by this part aboard the vessel.

(2) Vessel owners or operators who apply for a fishing vessel permit under this section must agree as a condition of the permit that the vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ and without regard to where such fish or gear are possessed, taken, or landed) will be subject to all the requirements of this part. All such fishing, catch, and gear will remain subject to any applicable State requirements. If a requirement of this part and a management measure required by State law differ, any vessel owner or operator permitted to fish in the EEZ must comply with the more restrictive requirement.

(b) *Application.* (1) An application for a fishing vessel to participate in the multispecies finfish fishery must be submitted and signed by the vessel owner on an appropriate form which may be obtained from the Regional Director. The application should be submitted to the Regional Director at least 2 months prior to the date on which the applicant desires to have the permit made effective to ensure that he will receive the permit on time.

(2) Applicants must provide all of the following information:

(i) The name, mailing address, and telephone number of the applicant and the vessel's master;

(ii) If the vessel owner is a corporation, the officers' and shareholders' names and mailing addresses;

(iii) The name of the vessel;

(iv) The vessel's official number;

(v) The home port and gross tonnage of the vessel;

(vi) The engine horsepower of the vessel;

(vii) The approximate fish-hold capacity of the vessel in pounds;

(viii) The type of fishing gear used by the vessel; and

(ix) The size of the crew, which may be stated in terms of a range.

(c) *Issuance.* (1) Upon receipt of a completed application, the Regional

Director will issue a permit within 45 days.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 21 days following the date of notification, the application will be discarded.

(d) *Surrender.* (1) A permit issued for a vessel may be surrendered by the owner thereof by certified mail addressed to the Regional Director.

(2) The Regional Director will reissue a permit which has been surrendered within 45 days from the date the reissuance was requested.

(e) *Expiration.* A permit expires on December 31 of each year.

(f) *Duration.* A permit is valid until it is voluntarily returned or expires or is revoked, suspended, or modified under 15 CFR Part 904.

(g) *Alteration.* Any permit which has been altered, erased, or multilated is invalid.

(h) *Replacement.* Replacement permits may be issued. An application for a replacement permit will not be considered a new application.

(i) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the vessel for which it is issued.

(j) *Display.* Any permit issued under this part must be carried aboard the fishing vessel at all times. The permit must be displayed for inspection at the request of an authorized officer.

(k) *Suspension and revocation.* Subpart D of 15 CFR Part 904 governs the imposition of sanctions against a permit issued under this part.

(l) *Fees.* No fee is required for any permit under this part.

(m) *Change is application information.* Any change in the information specified in paragraph (b) of this section must be reported to the Regional Director within 15 days of the change. Failure to report a change in information within 15 days of the change invalidates the permit.

(n) *Exempted fisheries program.* Any permit holder may initially request entry into the exempted fisheries program under § 651.22 by telephoning 617-281-4454. The permit holder must give his/her name, vessel name, vessel permit number, the specific exemption requested, the starting date and estimated duration of participation in the program, and the area of operation. The permit holder must have the letter of certification, which will be issued within one week, aboard at all times while engaged in an exempted fishery.

[52 FR 35094, Sept. 17, 1987; 52 FR 39637, Oct. 22, 1987]

§ 651.5 Recordkeeping and reporting. [Reserved]

[53 FR 24656, June 29, 1988]

§ 651.6 Vessel identification.

(a) *Vessel name.* Each fishing vessel subject to this part over 25 feet in length must display its name on the port and starboard sides of its bow and, as possible, on its stern.

(b) *Official number.* Each fishing vessel subject to this part over 25 feet in length must display its official number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be visible from above.

(c) *Numerals.* Except as provided in paragraph (e) of this section, the official number must be permanently affixed to each vessel subject to this part in contrasting block Arabic numerals at least 18 inches in height for vessels over 65 feet in length, and at least 10 inches in height for vessels over 25 feet in length. The length of a vessel, for purposes of this section, will be that length set forth in U.S. Coast Guard or State records.

(d) *Duties of owner and operator.* The owner and operator of each vessel subject to this part will

(1) Keep the vessel's name and official number clearly legible and in good repair, and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

(e) *Nonpermanent markings.* Vessels carrying recreational fishing parties on a per capita basis or by charter must use markings that meet the above requirements, except for the requirement that its number be affixed permanently to the vessel. The official number must be displayed in conformity with the above requirements when the vessel is fishing for multispecies finfish.

[52 FR 35094, Sept. 17, 1987; 52 FR 39537, Oct. 22, 1987]

§ 651.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person owning or operating a vessel issued a permit under § 651.4 to do any of the following:

(1) Land or possess any regulated species which fails to meet the minimum fish sizes specified in § 651.23.

(2) Fail to affix and maintain permanent markings as required by § 651.6.

(b) It is unlawful for any person to do any of the following:

(1) Use any vessel of the United States (except recreational fishing vessels) for taking, catching, harvesting or landing any regulated species taken from the EEZ unless the vessel has a valid permit issued under this part and the permit is aboard the vessel.

(2) Fish within the areas described in § 651.20(a) with nets smaller than the minimum size specified in § 651.20(b) unless the vessel is certified in an exempted fisheries program established under § 651.22.

(3) Fish within the areas described in § 651.20(a) outside of the exempted fisheries area specified in § 651.22(a) while the vessel is certified to participate in the exempted fisheries program under § 651.22.

(4) Fish in either area specified in § 651.21 during a period in which that area is closed, unless allowed by that section.

(5) Fail to comply with the gear-marking requirements of § 651.25.

(6) Import regulated species which are smaller than the minimum sizes specified in § 651.23.

(7) Make any false statement in connection with an application under § 651.4.

(8) Violate any provisions of the exempted fisheries program specified in § 651.22.

(9) Make any false statement, oral or written, to an authorized officer, concerning the taking, catching, harvest, landing, purchase, sale, possession, or transfer of any regulated species.

(10) Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search in the process of enforcement this part.

(c) [Reserved]

(d) *Presumption.* The possession for sale of regulated species which do not meet the minimum sizes specified in § 651.23 for sale will be *prima facie* evidence that such regulated species were taken or imported in violation of these regulations. Evidence that such fish were harvested by a vessel not holding a permit under this part and fishing exclusively within State waters will be sufficient to rebut the presumption. This presumption does not apply to fish being sorted on deck.

[52 FR 35094, Sept. 17, 1987, as amended at 53 FR 24657, June 29, 1988]

§ 651.8 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 651.9 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

Subpart B—Management Measures

§ 651.20 Regulated mesh area and gear limitations.

(a) The mesh sizes stated in paragraphs (b) and (c) of this section will apply to all vessels fishing within the area defined by accepted boundary limits and by straight lines (rhumb lines) connecting the following points in the order stated:

(1) *Gulf of Maine regulated mesh area* (Figure 1):

(i) Bounded on the east by the U.S.-Canada maritime boundary (point L to point M to point F);

(ii) Bounded on the south by a line from 42°20′ N. latitude, 67°18.4′ W. longitude (point F) to 42°20′ N. latitude, 70°00′ W. longitude (point E) then southward to the intersection of 70°00′ W. longitude with the territorial sea (point D) then following the seaward limit of the territorial sea northward along the coasts of Massachusetts, New Hampshire, and Maine to the

U.S.-Canada maritime boundary (point L).

(2) *Georges Bank regulated mesh area* (Figure 1): Bounded by straight lines connecting the following points:

Point	Latitude, longitude	Loran C bearings
Z	40°18.7' N., 69°40.0' W	9960-Y-43400 and 69°40' W.
A	40°53.5' N., 69°40.0' W	
B	41°35.0' N., 69°40.0' W	
C	41°35.0' N. and the territorial sea.	
D	Northward along the territorial sea to its intersection with 70°00.0' W.	
E	42°20.0' N., 70°00.0' W	
F	42°20.0' N., 67°18.4' W (on the U.S.-Canada maritime boundary).	
G	41°18.6' N., 66°24.8' W	5930-Y-30750 and the U.S.-Canada maritime boundary
N1	40°55.5' N., 66°38.0' W	5930-Y-30750 and 9960-Y-43500
N2	40°45.5' N., 68°00.0' W	9960-Y-43500 and 68°00' W.
N3	40°37.0' N., 68°00.0' W	9960-Y-43450 and 68°00' W.
N4	40°30.5' N., 69°00.0' W	9960-Y-43450 and 69°00' W.
N5	40°22.7' N., 69°00.0' W	9960-Y-43400 and 69°00' W.
Z	40°18.7' N., 69°40.0' W	9960-Y-43400 and 69°40' W.

NOTE: Loran lines are included for the convenience of fishermen. They are not to be relied upon for determining position for enforcement purposes.

(b) *Trawl nets*—(1) *Diamond mesh.* Except as provided for in §§ 651.20(b)(3), 651.20(d), and 651.22, the minimum mesh size for any trawl net, including midwater trawls, or Scottish seine used by a vessel fishing in the mesh areas described in paragraphs (a)(1) and (a) (2) of this section is 5½ inches for at least 75 continuous meshes forward of the terminus of the net (Figure 4).

(2) *Square mesh.* Vessels may use square mesh which the Regional Director has certified to be equivalent in terms of haddock escapement to the mesh sizes specified in paragraph (b)(1) of this section.

(3) *Selective shrimp gear.* Upon the recommendation of the Council, the Regional Director, after consultation with the Atlantic States Marine Fisheries Commission, may permit the use of gear with smaller mesh than that required in § 651.20(b)(1) for vessels in the shrimp fishery which use gear that has been demonstrated to allow adequate escapement of juvenile regulated species.

(c) *Gill nets.* (1) The minimum mesh size for any bottom-tending gill net used by a vessel fishing in the mesh areas described in paragraph (a) of this section will be the same as that specified under paragraph (b) of this section.

(2) In other portions of the New England area not subject to minimum mesh size restrictions under paragraph (b) of this section, the mesh in bottom-tending gill nets must be the same during the months of November through February as that in effect under paragraph (b) of this section for the Georges Bank regulated mesh area, as defined in paragraph (a)(2) of this section.

(d) *Midwater gear exception.* (1) For the Georges Bank regulated mesh area, fishing for Atlantic herring or blueback herring, mackerel, and squids may take place throughout the fishing year with mesh sizes less than the regulated size, provided that:

(i) Midwater trawl gear is used exclusively;

(ii) The vessel deploying midwater gear is permitted by the Regional Director; and

(iii) The bycatch of regulated species does not exceed one percent by weight of herrings, mackerel, and squids on board the vessel.

(2) For the Gulf of Maine regulated mesh area, fishing for herring and mackerel may take place from December through May with mesh sizes less than the regulated size, provided that the requirements of paragraphs (d)(1) (i) and (ii) of this section are met and that the bycatch of regulated species does not exceed one percent by weight of herrings and mackerel on board the vessel.

(e) *Mesh measurements.* (1) Mesh sizes are measured by a wedge-shaped gauge having a taper of two centimeters in eight centimeters and a thickness of 2.3 millimeters, inserted into the meshes under a pressure or pull of five kilograms. The mesh size will be the average of the measurements of any series of 20 consecutive meshes

The mesh in the regulated portion of the net will be measured at least five meshes away from the lacings, running parallel to the long axis of the net.

(2) A fishing vessel may not use any means or device which would obstruct the meshes on the top of the regulated portion of a trawl net, except that one net strengthener may be attached (only at its outside edges) to the top of the regulated portion of a trawl net, if such net strengthener consists of mesh material similar to the material of the regulated portion of the net and has a mesh size of the least twice the authorized minimum mesh size. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net which (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor.

(f) Except as provided in paragraph (d) of this section, no vessel issued a permit under § 651.4 may have available for immediate use any net not meeting the requirements specified in paragraphs (b) and (c) of this section, or mesh that is rigged in a manner which is inconsistent with § 651.20(e)(2), while in the areas described in paragraph (a) of this section. A net that conforms to one of the four following specifications and which cannot be shown to have been in recent use is considered to be "not available for immediate use":

(1) Nets stored below deck; or

(2) Nets stowed and lashed down on deck; or

(3) Nets which are on reels and are covered and secured; or

(4) Nets on vessels which have the towing wires detached from the gear.

§ 651.21 Closed areas.

(a) *Georgia Bank.* No person may fish within the following areas during the months of February through May.

(1) An area known as Closed Area I (Figure 2) bounded by six straight lines (rhumb lines) connecting the following points in the order stated:

Point	Latitude	Longitude
a	40°53′ N.	68°53′ W.;
b	41°35′ N.	68°30′ W.;
c	41°50′ N.	68°45′ W.;
d	41°50′ N.	69°00′ W.;
e	41°30′ N.	69°00′ W.;
f	41°30′ N.	69°23′ W.; and
a	40°53′ N.	68°53′ W.

(2) An area known as Closed Area II (Figure 2) bounded by three straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
g	41°15′ N.	67°00′ W.;
h	41°15′ N.	66°22.4′ W. (the U.S.-Canada Maritime Boundary);
i	41°59.1′ N.	67°00′ W. (the U.S.-Canada Maritime Boundary);
g	41°15′ N.	67°00′ W.

(3) *Exceptions.* Paragraphs (a) (1) and (2) of this section do not apply—

(i) To longline vessels that fish with hooks having a gape of not less than 1.18 inches (30 mm), Closed Area I, only;

(ii) To pot gear designed and used to take lobsters; or

(iii) To dredges designed and used to take scallops.

(4) The Regional Director may open either or both Closed Areas I and II prior to the scheduled opening in May by notice in the FEDERAL REGISTER, if he determines that concentrations of spawning fish are no longer in the area(s).

(b) *Southern New England/Mid-Atlantic Region.* (1) Except as provided in paragraph (b)(3) of this section, during a closure, no person may fish within the area bounded by straight lines (rhumb lines) connecting the following points in the order stated (Figure 3):

Point	Latitude	Longitude
A	40°33.5′ N.	69°40′ W.;
N	40°26.5′ N.	70°40′ W.;
O	40°40.5′ N.	70°40′ W.;
P	40°30′ N.	72°00′ W.;
Q	40°17.8′ N.	72°00′ W.;
R	40°15.5′ N.	72°20′ W.;
S	40°39.0′ N.	72°20′ W.;
T	40°42.0′ N.	72°00′ W.;

Point	Latitude	Longitude
U	40°48.2′ N.,	72°00′ W.;
V	41°00′ N.,	70°49.5′ W.;
W	41°00′ N.,	70°30′ W.;
X	40°50′ N.,	70°30′ W.;
Y	40°50′ N.,	69°40′ W.; and
A	40°33.5′ N.,	69°40′ W.

(2) The area defined in paragraph (b)(1) of this section will be regulated as follows:

(i) The portion of the area east of 71°30′ W. longitude will close on March 1 each year and the portion west of 71°30′ W. longitude will close on April 1 each year.

(ii) The entire area will be reopened at 2400 hours on May 31 of each year, or at an earlier date after May 1 by notice in the FEDERAL REGISTER, when the Regional Director, after consultation with Council, determines that the closure has achieved the appropriate spawning level for yellowtail and winter flounder.

(3) Exceptions.

(i) Paragraph (b)(1) of this section does not apply—

(A) To pot gear designed and used to take lobsters;

(B) To dredge gear designed and used to take ocean quahogs or surf clams; and

(C) Hook-and-line gear; however, the possession of yellowtail flounder by persons or vessels fishing with hook and line gear within this area is prohibited.

(ii) In the Southern New England Closed Area described in § 651.21(b), fishing with midwater trawl gear may be permitted by the Regional Director. Any person intending to use midwater trawl nets in the area described in paragraph (b) of this section must notify the Regional Director in writing 30 days prior to the date on which the nets will be used. The Regional Director will issue a letter certifying the use of such nets. Fishing in these areas with midwater trawl nets may not commence without a letter of certification carried aboard the vessel. A vessel conducting such fishing may not retain aboard or land any regulated species.

[52 FR 35094, Sept. 17, 1987; 52 FR 39537, Oct. 22, 1987]

§ 651.22 Exempted fishery program.

(a) *General.* The Regional Director will establish and implement an exempted fishery program to allow fishing vessels to engage in small mesh fisheries for species which require the use of mesh smaller than the size specified in § 651.20(b).

(1) Exempted fishing may be conducted shoreward of the area bounded by the straight lines (rhumb lines) connecting the following points in the order stated (Figure 1):

Point	Latitude	Longitude
C	41°35′ N. and the territorial sea;	
B	41°35.5′ N.,	69°40′ W.;
H	42°49.5′ N.,	69°40′ W.;
I	43°12′ N.,	69°00′ W.;
J	43°41′ N.,	68°00′ W.;
K	43°58′ N.,	67°22′ W. (the U.S.-Canada maritime Boundary); and
L	Northward along the irregular U.S.-Canada maritime boundary to the territorial sea.	

(2) The eastern boundary of the December–January combined whiting and shrimp exempted fishery is 69°00′ W. longitude (Figure 1).

(b) *Entry.* (1) Any person owning or operating a vessel issued a valid Federal multispecies finfish permit may apply to fish under the exempted fisheries program by following the procedures set forth in § 651.4(n).

(2) The period of participation must be for at least 7 days, but not longer than 30 days. There is no limit on the number of times a vessel can apply to participate in the exempted fisheries program.

(c) *Certification.* (1) The Regional Director will certify in writing the entry of the applicant into the exempted fisheries program. Entry may be denied to an applicant based on the applicant's violation of the Magnuson Act, if the applicant has received a notice of violation and assessment concerning the violation.

(2) Entry of the applicant into the exempted fisheries program cannot occur until the applicant receives written certification from the Regional Director.

(d) *Commencement of fishing.* Fishing under the exempted fisheries program may begin after the applicant has received the certification from the Regional Director provided that this letter is retained aboard the vessel.

(e) *Limitations.* (1) During the period of participation in the exempted fisheries program, the vessel may not be employed to fish in the regulated mesh areas outside the area specified in paragraph (a) of this section. A vessel may not land regulated species in excess of the percentages specified in paragraph (e)(2) of this section over the period of participation in the program.

(2) Participation in the exempted fisheries program is subject to seasonal limitations, exempted species, and maximum regulated species percentage restrictions as follows:

Period	Target species	Comment
June through November	Dogfish, herring, mackerel, red hake, silver hake, squid, and ocean pout	Regulated species may not exceed 10% of the total landings of dogfish, herring, mackerel, red hake, silver hake, squid, and ocean pout during the reporting period.
December through January	Whiting	Regulated species may not exceed 10% of the total landings of whiting and shrimp during the reporting period; the fishery will be monitored by at-sea sampling.
December through May or as specified by ASFMC [1]	Shrimp	Regulated species may not exceed 10% of the total landings of shrimp during the reporting period.

[1] The Northern Shrimp Section of the Atlantic States Marine Fisheries Commission is responsible for the management of northern shrimp. The Section has designated a regulatory period from December through May within which it sets the annual fishing season for northern shrimp. The Section has the authority to adjust the regulatory period or add additional measures appropriate for the conservation of northern shrimp. The Section will consult with the New England Fishery Management Council regarding recommendations to adjust the regulatory period, with respect to the management of multispecies.

(3) Adjustments in the seasons, species or percentages of the exempted fisheries will be accomplished by regulatory amendment.

(f) *Recordkeeping and reporting.* The reporting period for the exempted fisheries will be 30 calendar days. Within one week from the expiration of the reporting period or withdrawal from the program under paragraph (g) of this section, or receipt of a notice of revocation under paragraph (h) of this section, the participant must mail or deliver to the Regional Director a NOAA Form 88-153 "Fishing Vessel Record", or business records that provide equivalent information, listing in pounds all fish landed during participation in the exempted fishery program on a trip-by-trip basis, or documentation that no fishing occurred. If no fish were landed, the participant must submit a document indicating no landings. The participant must provide, upon request of the Regional Director or his designee, trip landing records, kept in the normal course of business, that are certified as accurate by both the buyer and the seller for one year after his participation in the exempted fishery program to confirm the information required in NOAA Form 88-153. Buyer certification may be satisfied by the buyer's signature on the trip record that is retained by the seller (vessel operator). The responsible fishing vessel owner or opertor may alternatively maintain accurate trip-by-trip landings data on a NOAA Form 88-153 provided on request from the Regional Director.

(g) *Expiration or withdrawal.* Participation in the program expires at the end of the participation period under § 651.4(n), or when the owner's or vessel's name changes, or when a participant who has been duly operating in the program for at least 7 days notifies the Regional Director of his/her intent to withdraw from the program. Such withdrawal will be effective when the participant receives notice of the withdrawal from the Regional Director.

(h) *Revocation.* The Regional Director may end the participation of any applicant in the exempted fisheries program upon issuance of a notice of violation and assessment for violating any provisions of the program or the Magnuson Act. Notification will be in writing and will take effect upon receipt by the participant.

EFFECTIVE DATE NOTE: At 52 FR 35094, Sept. 17, 1987, § 651.22 was revised, effective October 1, 1987, except for the information collection requirements contained in paragraph (f). When OMB approval is received, a notice will be published in the Federal Register announcing the effective date.

§ 651.23 Minimum fish size.

(a) The minimum sizes (total length) for certain regulated species follow:

(1) Commercial fishing vessels.

	Year 1 (inches)	Year 2 and beyond (inches)
Cod, haddock and pollock	17	19
Witch flounder (gray sole)	14	14
Yellowtail flounder	12	12
American plaice (dab)	12	12
Winter flounder (blackback)	11	11

(2) Recreational fishing vessels, charter and party boats, and individuals.

(i) Effective Year 1—Cod and haddock: 15 inches;

(ii) Effective Years 2 and 3—Cod and haddock: 17 inches;

(iii) Effective Year 4 and later—Cod and haddock: 19 inches.

(3) For purposes of paragraphs (a)(1) and (2) of this section, Year 1 is September 15, 1986, through September 30, 1987; Year 2 is October 1, 1987, through September 30, 1988; and Years 3 and later begin on October 1, 1988, and each year thereafter.

(b) The minimum lengths allowed by paragraph (a) of this section are measured on a straight line from the tip of the snout to the end of the tail.

[52 FR 35094, Sept. 17, 1987; 52 FR 37159, Oct. 5, 1987]

§ 651.24 Experimental fishing.

The Secretary may authorize experimental fishing, which is not otherwise authorized by these regulations, for the acquisition of information.

§ 651.25 Gear marking requirements.

(a) Bottom-tending fixed gear (gill nets and longlines) fishing for multispecies finfish must have the name of the owner or vessel, or the official number of that vessel, permanently affixed to any buoys, gill nets, or longlines.

(b) Bottom-tending gill net or longline gear must be marked so that the westernmost end (measuring the half compass circle from magnetic south through west to and including north) of the gear displays a standard 12-inch tetrahedral corner radar reflector and a pennant positioned on a staff at least 6 feet above the buoy. The easternmost end (meaning the half compass circle from magnetic north through east to and including south) of the gear must display only the standard 12-inch tetrahedral radar reflector positioned in the same way.

(c) The maximum length of continuous gill nets must not exceed 6,600 feet between the end buoys.

(d) In the Gulf of Maine regulated mesh area specified in § 651.20, sets of gill net gear which are of an irregular pattern or which deviate more than 30 degrees from the original course of the set will be marked at the extremity of the deviation with an additional marker which must display two or more visible streamers and may either be attached to or independent of the gear.

[52 FR 35094, Sept. 17, 1987; 52 FR 37159, Oct. 5, 1987]

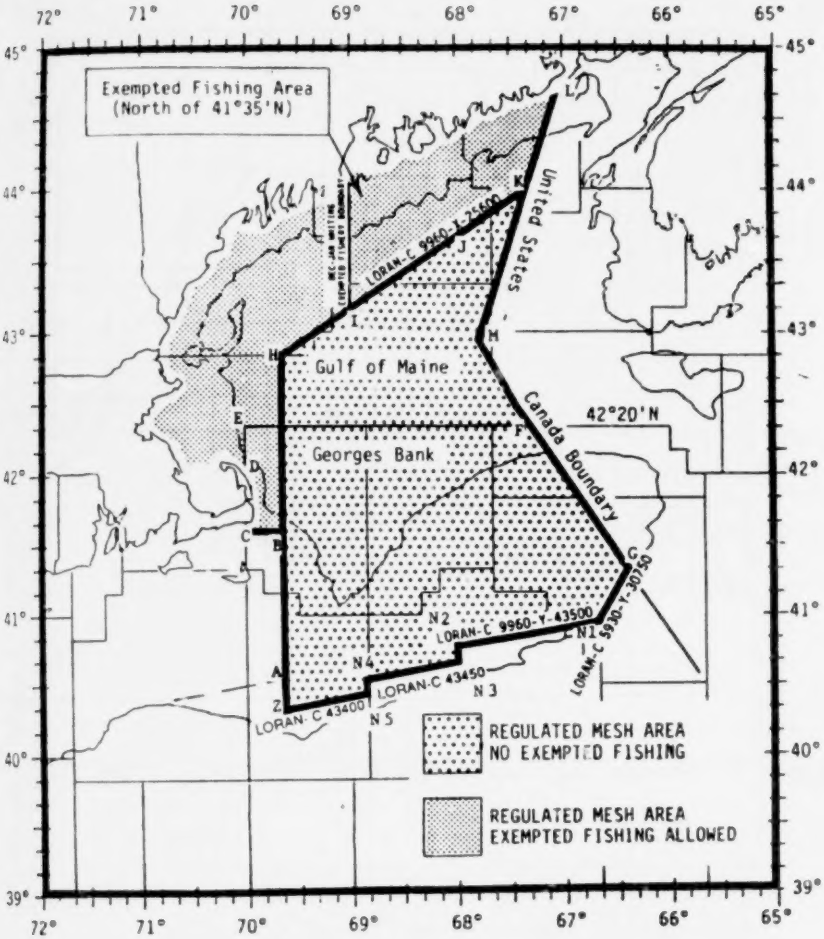
72°
71°
70°
69°
68°
67°
66°
65°
45°
44°
43°
42°
41°
40°
39°
Exempted Fishing Area
(North of 41°35'N)
United States
Canada Boundary
Gulf of Maine
Georges Bank
42°20'N
LORAN-C 9960-Y-25600
LORAN-C 9960-Y-43500
LORAN-C 5930-Y-30750
LORAN-C 43450
LORAN-C 43400
A
B
C
D
E
F
G
H
I
J
K
L
M
N1
N2
N3
N4
N5
Z
REGULATED MESH AREA
NO EXEMPTED FISHING
REGULATED MESH AREA
EXEMPTED FISHING ALLOWED

Figure 1. **New England regulated mesh areas and areas of exempted and non-exempted fishing. See text for details.** These areas are defined in §651.20(a). Loran lines are included for the convenience of fishermen. They are not to be relied upon for determining position for enforcement purposes.

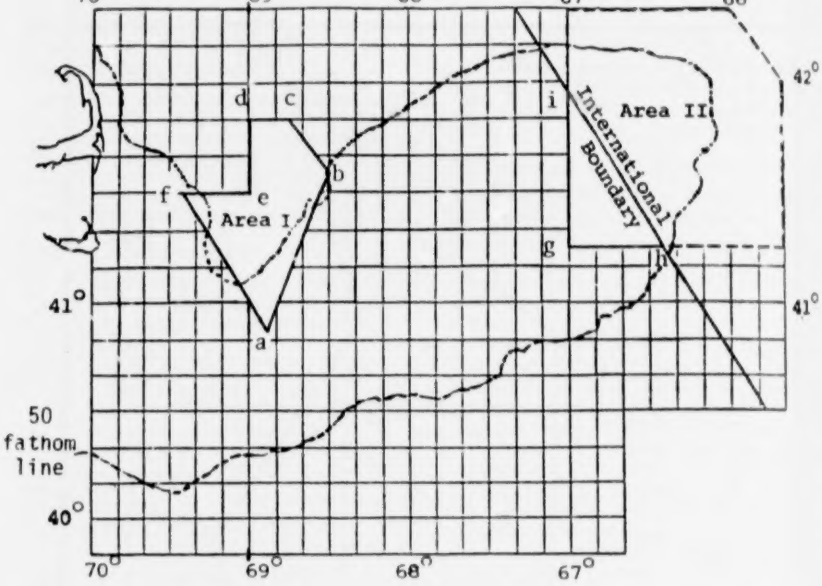
70°
69°
68°
67°
66°
42°
41°
41°
40°
d
c
i
b
f
e
a
g
h
Area I
Area II
International Boundary
50 fathom line
70°
69°
68°
67°

Figure 2. Georges Bank haddock spawning Closed Areas I and II.

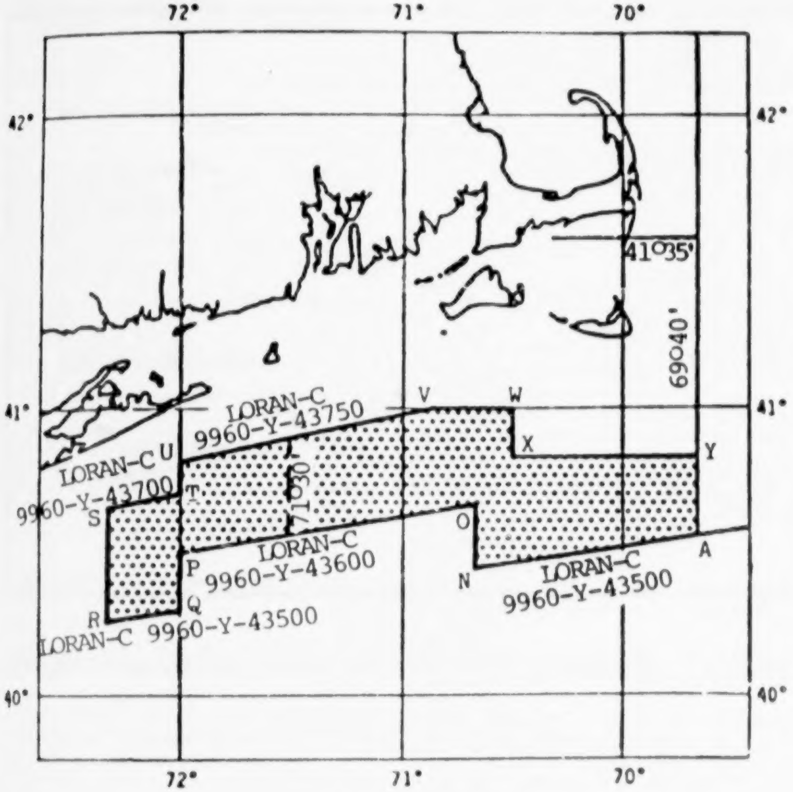
72°
71°
70°
42°
41°
40°
41°35'
69°40'
V
W
X
Y
LORAN-C 9960-Y-43750
LORAN-C U
9960-Y-43700
T
S
71°30'
O
LORAN-C 9960-Y-43600
P
Q
R
N
A
LORAN-C 9960-Y-43500
LORAN-C 9960-Y-43500

Figure 3. Southern New England/Middle Atlantic region closure. Coordinates listed in §651.21(b).

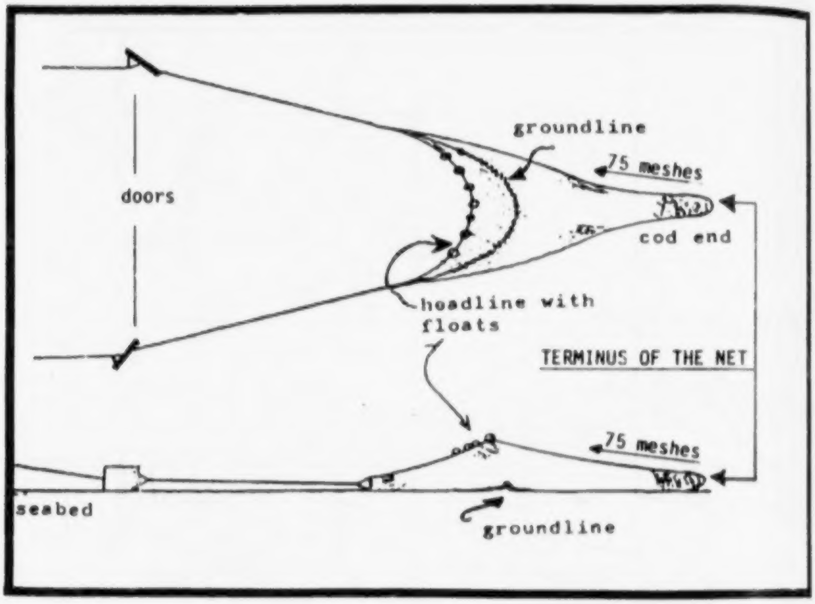
groundline
75 meshes
doors
cod end
headline with floats
TERMINUS OF THE NET
75 meshes
seabed
groundline

FIGURE 4 Diagram of a bottom trawl net showing the terminus of the net

PART 652—ATLANTIC SURF CLAM AND OCEAN QUAHOG FISHERIES

Subpart A—General Provisions

Sec.

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652.2 Definitions.
652.3 Relation to other laws.
652.4 Permits.
652.5 Recordkeeping and reporting.
652.6 Vessel identification.
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652.21 Catch quotas.
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652.23 Closed areas.
652.24 Vessel moratorium.
652.25 Size restrictions.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 652.1 Purpose.

(a) This part regulates fishing for surf clams (*Spisula solidissima*) and ocean quahogs (*Arctica islandica*) in the Atlantic Ocean EEZ.

(b) These regulations implement the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries.

[47 FR 4270, Jan. 29, 1982, as amended at 52 FR 27816, July 24, 1987]

§ 652.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Bushel means a standard unit of measure presumed to hold 1.88 cubic feet of surf clams or ocean quahogs in the shell.

Cage means a standard unit of measure presumed to hold 32 bushels of surf clams or ocean quahogs in the shell. The outside dimensions of a standard cage generally are 3′ wide, 4′ long and 5′ high.

Council means the Mid-Atlantic Fishery Management Council.

Directed fishery means, with respect to any species, a fishery conducted for the purpose of catching that species.

Fishing trip means a departure from port, transit to the fishing grounds, fishing, and discharge of any part of the catch on board.

Georges Bank Area means that portion of the New England Area east of 69° W. longitude.

Home Port means that port listed as home port on a vessel permit on file with NMFS.

Home Port Area, for vessels whose home port is in one of the Mid-Atlantic States, means the Mid-Atlantic Area; for vessels whose home port is in one of the New England states, means the Nantucket Shoals Area.

Mid-Atlantic Area means that portion of the EEZ in the Atlantic Ocean south of a rhumb line connecting the point 41°18.27′ N. latitude and 71°54.47′ W. longitude with the point 38°03.4′ N. latitude and 68°41.7′ W. longitude, the outward boundary of the EEZ.

Mid-Atlantic States means the States of New York, New Jersey, Pennsylvania, Delaware, Maryland, or Virginia.

Nantucket Shoals Area means that portion of the New England Area west of 69° W. longitude.

New England Area means that portion of the EEZ in the Atlantic Ocean north of a rhumb line connecting the point 41°18.27′ N. latitude and 71°54.47′ W. longitude with the outward boundary of the EEZ at 38°03.4′ N. latitude and 68°41.7′ W. longitude. This includes the fishing areas designated as the Nantucket Shoals Area and the Georges Bank Area.

New England States means the States of Connecticut, Rhode Island, Massachusetts, New Hampshire, or Maine.

Notification Zone means

(a) For vessels authorized to fish in both the Mid-Atlantic and New England Areas with home ports in the Mid-Atlantic Area, the Nantucket Shoals and Georges Bank Areas are notification zones.

(b) For vessels authorized to fish in both the Mid-Atlantic and New England Areas with home ports in the New England Area, the Mid-Atlantic and Georges Bank Areas are notification zones.

(c) For vessels authorized to fish only in the New England Area, the Georges Bank Area is a notification zone.

Personal use means harvest of surf clams or ocean quahogs for use as bait, for human consumption, or for other purposes (not including sale or barter) in amounts not to exceed 2 bushels per person per trip.

Regional Director means the regional Director, Northeast Region, NMFS, Federal Building, 14 Elm Street, Gloucester, MA 01930-3799. Telephone 617-281-3600.

[47 FR 4270, Jan. 29, 1982, as amended at 50 FR 32710, Aug. 14, 1985; 52 FR 27816, 27817, July 24, 1987; 53 FR 24655, June 29, 1988]

§ 652.3 Relation to other laws.

The relation of this part to other laws is set forth in § 620.3 of this chapter.

[53 FR 24655, June 29, 1988]

§ 652.4 Permits.

(a) *General*—(1) *Requirement.* A vessel owner or operator must obtain a permit in order to:

(i) Conduct a directed fishery for surf clams or ocean quahogs within the EEZ, or

(ii) Land or transfer to another vessel any surf clams or ocean quahogs or part thereof caught within the EEZ.

(2) *Exemption.* Vessels taking surf clams or ocean quahogs for personal use are exempt from this section.

(b) *Eligibility*—(1) *Surf clams—New England and Mid-Atlantic Areas.* A vessel is eligible for a permit to harvest surf clams in both the New England and Mid-Atlantic Areas if it meets any of the following criteria:

(i) The vessel has landed surf clams in the course of conducting a directed fishery for surf clams between November 18, 1976, and November 17, 1977; or

(ii) The vessel was under construction for, or was being rerigged for, use in the directed fishery for surf clams on November 17, 1977. For the purpose of this paragraph, "under construction" means that the keel had been laid, and "being rerigged" means physical alteration of the vessel or its gear had begun to transform the vessel into one capable of fishing commercially for surf clams; or

(iii) The vessel is replacing a vessel of substantially similar harvesting capacity which involuntarily left the surf clam fishery during the moratorium, and both the entering and replaced vessels are owned by the same person.

(2) *Surf clams—New England Area only.* Any vessel of the United States is eligible for a permit allowing it to harvest surf clams in the New England Area only.

(3) *Ocean quahogs.* Any vessel of the United States is eligible for a permit allowing it to harvest ocean quahogs only.

(c) *Application.* The owner or operator must submit a permit application on an appropriate form obtained from the Regional Director before November 1 of each year or at least 30 days before the date the applicant desires to have the permit be effective. The application will contain at least the following information:

(1) Names, mailing addresses, and telephone numbers of the owner and operator;

(2) The name of the vessel;

(3) The vessel's U.S.Coast Guard documentation number or State license number;

(4) Engine and pump horsepower;

(5) Homeport of the vessel;

(6) Directed fishery or fisheries;

(7) Fish hold capacity (in cages or bushels);

(8) Dredge size and number of dredges;

(9) Amount of surf clams and ocean quahogs landed between November 18, 1976, and November 17, 1977 (in bushels, if applicable);

(10) Number of fishing trips between November 18, 1976, and November 17, 1977;

(11) Date of beginning of construction or rerigging (if applicable);

(12) Signature of the owner or operator; and

(13) Any other information which may be necessary for the issuance or administration of the permit.

(d) *Issuance.* Except as provided in Subpart D of 15 CFR Part 904, the Regional Director will issue a permit to each eligible vessel for which an application is submitted. The eligibility of a vessel to fish for surf clams will be determined consistent with this section. There will be no fee for the permit.

(e) *Appeal of denial of permit.* (1) Any applicant denied a permit by the Regional Director may appeal to the Assistant Administrator for review of the denial. Any such appeal must be in writing. Any of the following grounds may form the basis for review:

(i) Applicant believes denial was in error;

(ii) Applicant was prevented by circumstances beyond his control from meeting relevant criteria;

(iii) Applicant has new or additional information which might change the initial decision; or

(iv) Applicant can show that significant and unusual hardship will result from the denial.

(2) The appeal may be presented, at the option of the applicant, at a hearing before a person appointed by the Assistant Administrator to hear the appeal.

(3) The decision of the Assistant Administrator will be the final decision of the Department of Commerce.

(f) *Transfer.* A permit is valid only for the vessel for which it is issued.

(g) *Display.* The permit must be carried, at all times, on board the vessel for which it is issued, and must be maintained in legible condition. The permit, the vessel, its gear and catch shall be subject to inspection upon request of any authorized official.

(h) *Expiration.* Except as provided in paragraph (h)(3) of this section, a permit will expire:

(1) When the owner or operator retires the vessel from the fishery (it is a rebuttable presumption that failure to land any surf clams or ocean quahogs for 52 consecutive weeks constitutes retirement from the fishery), or

(2) On December 31 of each year, or

(3) When the ownership of the vessel changes; however, the Regional Director may authorize continuation of a vessel permit for the surf clam fishery if the new owner so requests and the vessel meets the relevant criteria of eligibility set forth in § 652.4(b). Applications for continuation of a permit must be addressed to the Regional Director.

(i) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

[47 FR 4270, Jan. 29, 1982, as amended at 48 FR 34762, Aug. 1, 1983; 49 FR 1043, Jan. 6, 1984; 52 FR 27816, 27817, July 24, 1987]

§ 652.5 Recordkeeping and reporting.

(a) *Dealers*—(1) *Weekly report.* Any person who buys surf clams and ocean quahogs from a fishing vessel subject to these regulations shall provide at least the following information to the Regional Director on a weekly basis, on forms supplied by the Regional Director:

(i) Name and mailing address of dealer or processing plant;

(ii) Name and permit number of the vessel from which surf clams or ocean quahogs are landed or received;

(iii) Dates or purchases;

(iv) Number of bushels purchased, by species;

(v) Price per bushel, by species;

(vi) Meat yield per bushel, by species; and

(vii) Tag numbers from cages purchased, by vessel.

(2) *Annual report.* All persons required to submit reports under paragraph (a)(1) of this section shall also provide the following information to the Regional Director on an annual basis, on forms supplied by the Regional Director.

(i) Number of dealer or processing plant employees during each month of the year just ended;

(ii) Number of employees engaged in production of processed surf clam and ocean quahog products, by species, during each month of the year just ended;

(iii) Plant capacity to process surf clam and ocean quahog shellstock, or to process surf clam and ocean quahog meats into finished products, by species; and

(iv) An estimate, for the next year, of the capacities described in paragraph (a)(2)(iii) of this section.

If the capacities described in paragraph (a)(2)(iii) of this section change more than ten percent during any year, the processor shall promptly notify the Regional Director of the change in capacity.

(3) *At-sea activities.* All persons purchasing, receiving, or processing any surf clams or ocean quahogs at sea for transport to any port of the United States must submit information identical to that required by paragraphs (a) (1) and (2) of this section and provide those reports to the Regional Director on the same frequency basis.

(b) *Owners and operators*—(1) *Daily fishing log.* The owner or operator of any vessel conducting any fishing operations subject to these regulations shall maintain, on board the vessel, an accurate daily fishing log for each fishing trip, on forms supplied by the Regional Director, showing at least:

(i) Name and permit number of the vessel;

(ii) Total amount in bushels of each species taken;

(iii) Date(s) caught;

(iv) Time at sea;

(v) Duration of fishing time;

(vi) Locality fished;

(vii) Crew size;

(viii) Crew share by percentage;

(ix) Landing port;

(x) Date sold;

(xi) Price per bushel;

(xii) Buyer; and

(xiii) Tag numbers from cages used.

(2) *When to fill in log.* To the extent possible, owners or operators shall fill out such logbooks before landing any surf clams or ocean quahogs at the end of any fishing trip. All logbook information required in paragraph (b)(1) of this section must be filled in for each fishing trip before starting the next fishing trip.

(3) *Inspection.* The owner or operator shall make the logbook available for inspection by an authorized officer, or by an employee of the NMFS designated by the Regional Director to make such inspections, at any time during or after a trip.

(4) *Record retention.* For one year after the date of the last entry in the log, the owners or operator shall keep each logbook at the owner's or operator's principal place of business.

(5) *Weekly reports.* The owner or operator shall submit weekly reports to the Regional Director, on forms supplied by the Regional Director. If no fishing trip is made during a week, a report so stating must be submitted.

(6) *Annual reports.* All persons required to submit reports under paragraph (b) of this section shall submit annually to the Regional Director, on forms supplied by the Regional Director, at least the following information relating to vessel characteristics: name of the vessel, vessel's U.S. Coast Guard Guard documentation number or State license number, engine and pump horsepower, homeport of vessel, hold capacity (in bushels or cages), and dredge size and number of dredges.

(7) *Notification of intention to fish.* (i) Vessel owners or operators must inform the Regional Director in writing not less than 15 days before fishing in a notification zone may begin. The written notification should include the following information:

(A) Permit number of vessel;

(B) Notification zone in which vessel will fish;

(C) Date on which vessel will begin fishing in the specified notification zone, and

(D) Name and address of vessel owner, operator, or authorized person providing notification.

(ii) The Regional Director will issue a letter to the vessel owner or operator specifying the date, 15 days after receipt of notification, on which fishing in a notification zone may begin.

(iii) Vessel owners or operators who must give notice in order to fish in a notification zone include:

(A) Owners or operators of vessels with permits to fish in both the Mid-Atlantic and New England Areas and with home ports in the Mid-Atlantic States who intend to fish in the Nantucket Shoals or Georges Bank Areas.

(B) Owners or operators of vessels with permits to fish in both the Mid-Atlantic and New England Areas and with home ports in the New England States who intend to fish in the Mid-Atlantic or Georges Bank Area; and

(C) Owners or operators of vessels with permits to fish only in the New England Area who intend to fish in the Georges Bank Area.

(iv) To change the vessel's area of fishing from one notification zone to another notification zone, the vessel owner or operator must notify the Regional Director in writing not less than 15 days in advance of the date fishing is to begin.

(v) To resume fishing in the home port area, the vessel owner or operator must notify the Regional Director not less than 24 hours before fishing in the home port area is to resume.

(vi) Notifications received by the Regional Director are cancelled if:

(A) Appropriate notice is given under § 652.5(b)(7) (iv) or (v).

(B) A vessel intends to leave the home port area to fish in a notification zone, but fishes for surf clams in the home port area past the date on which fishing in the notification zone was scheduled to begin without notifying the Regional Director, and

(C) A vessel fishing in a notification zone returns to fish for surf clams in the home port area without notifying the Regional Director.

(c) Vessel owners or operators with permits to fish only in the New England Area are subject to the requirements of this section. "Nantucket Shoals" is substituted for "home port area" in all applicable sections.

[47 FR 4270, Jan. 29, 1982, as amended at 48 FR 34762, Aug. 1, 1983; 50 FR 11169, Mar. 20, 1985; 50 FR 32710, Aug. 14, 1985; 53 FR 24656, June 29, 1988]

§ 652.6 Vessel identification.

(a) *Official number.* The operator of each fishing vessel 25 feet in length or longer subject to these regulations shall display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft. Vessels under 25 feet in length do not need to display any number. The official number is the documentation number issued by the U.S. Coast Guard or the certificate of number issued by a State or the Coast Guard for undocumented vessels.

(b) *Markings.* Such markings must be at least eighteen (18) inches in height for fishing vessels over 65 feet in length, and at least ten (10) inches in height for all other vessels over 25 feet in length. The official number must be permanently affixed to or painted on the vessel and must be block Arabic numerals of a color that contrasts with the background.

(c) *Duties of the operator.* The operator of each vessel shall:

(1) Keep the required identifying markings clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, or its fishing gear obstructs the view of the markings from an enforcement vessel or aircraft.

(d) *New Jersey vessels.* Instead of complying with paragraphs (a) and (b) of this section, vessels licensed under New Jersey law may use the appropriate vessel identification markings established by that State.

[47 FR 4270, Jan. 29, 1982]

§ 652.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for any surf clams or ocean quahogs:

(1) During closed seasons; or

(2) In closed areas as specified in these regulations; or

(3) On days of the week in which fishing for these species is not authorized;

(4) Without having provided the notice required by § 652.5(b)(7); or

(5) In excess of applicable trip landing limits.

(b) Fish for surf clams except during the authorized time period(s) assigned to the vessel he is operating.

(c) Catch and retain on board any surf clams on other than an authorized surf clam fishing trip.

(d) Unload or cause to be unloaded, or sell or buy, any surf clams or ocean quahogs whether on land or at sea, without preparing and submitting the documents required by § 652.5.

(e) Use any fishing vessel to engage in fishing without a permit, unless exempted under § 652.4(a)(2), or after the revocation, or during the period of suspension, of an applicable permit issued under § 652.4.

(f) Alter, erase or mutilate:

(1) Any permit issued under § 652.4;

(2) Any letter of authorization issued under § 652.22;

(3) Any surf clam cage tags issued under § 652.11(b).

(g) Possess surf clams taken in violation of the size limit prescribed in § 652.25.

(h) Possess surf clams harvested under this FMP in containers that are not tagged as required by § 652.11.

(i) Use surf clam cage tags issued under § 652.11(b) in a manner inconsistent with the terms of § 652.11(c).

(j) No person may fish for surf clams in a notification zone or resume fishing in a home port area prior to the vessel's owner or operator notifying the Regional Director as specified by these regulations.

(k) Knowingly submit false information in records and reports required to be kept and filed under § 652.5.

(l) Violate any other provision of the Magnuson Act, these regulations, or any applicable permit issued under § 652.4.

(m) Harvest or land surf clams in the Mid-Atlantic area during or after an authorized fishing period if surf clams have been landed during that authorized period.

[47 FR 4270, Jan. 29, 1982, as amended at 49 FR 49094, Dec. 18, 1984; 50 FR 11169, Mar. 20, 1985; 50 FR 32710, Aug. 14, 1985; 51 FR 17347, May 12, 1986; 52 FR 27816, July 24, 1987; 53 FR 24657, June 29, 1988]

§ 652.8 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 652.9 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

§ 652.10 Foreign fishing.

Fishing for surf clams or ocean quahogs in the EEZ by any vessel other than a vessel of the United States is prohibited.

[47 FR 4270, Jan. 29, 1982. Redesignated at 48 FR 31861, July 12, 1983, and amended at 52 FR 27817, July 24, 1987]

§ 652.11 Cage identification.

(a) *Tagging.* Before off-loading, all cages and other containers that contain surf clams must be tagged with tags provided annually by the Regional Director under paragraph (b) of this section. Tags must be fixed on or as near as possible to the upper crossbar of the cage or container, or to the corresponding part of a tub or other container used for carrying the clams. Tags must not be removed until cages are emptied at the processing plant, at which time the processor must promptly remove and retain them for collection or disposal as specified by the Regional Director.

(b) *Acquisition and return of tags.* (1) An initial supply of tags will be issued to each individual vessel by the Regional Director prior to the beginning of each fishing year. The number of tags issued will be based on the previous year's landings.

(2) Additional tags may be obtained, if required, by the vessel owner, master, or mate, upon written request to the Regional Director.

(3) Tags will expire at the end of the fishing year for which they were issued. Unused tags must be returned to the Regional Director within 30 days after the end of the fishing year.

(c) *Use of tags.* (1) Tags are not transferable among vessels, and must be returned when a permit expires by reason of a vessel's being sold or otherwise removed from the fishery.

(2) Alteration, theft, destruction, transfer, or other misuse of tags is a violation of these regulations.

(3) Loss or theft of tags must be reported to the Regional Director in writing within twenty-four hours.

(4) Any cage of surf clams harvested within the jurisdiction of this FMP that is found in commerce without a tag is in violation of these regulations.

(5) Processors must promptly remove the used tag after a cage is emptied, and retain the tag for collection or disposal as specified by the Regional Director.

(d) *Presumption.* Clams in cages or containers with colored numbered tags matching those issued to a vessel under these regulations will be presumed to have been taken by that vessel.

[50 FR 11169, Mar. 20, 1985]

Subpart B—Management Measures

§ 652.21 Catch quotas.

(a) *Surf clams: Mid-Atlantic Area.* The amount of surf clams which may be caught in the Mid-Atlantic Area by fishing vessels subject to these regulations will be specified annually within the range of 1,800,000 and 2,900,000 bushels. This annual quota will be divided into equal quarterly quotas, the quarters being January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Each fishing quarter will begin on the first Sunday of the new calendar quarter.

(1) *Establishing quotas.* Prior to the beginning of each year, the Regional Director will prepare a written report, based on the latest available stock assessment report prepared by the National Marine Fisheries Service, data reported by harvesters and processors according to these regulations, and other relevant data. The report will include consideration of:

(i) Exploitable biomass and spawning biomass relative to optimum yield;

(ii) Fishing mortality rates relative to optimum yield;

(iii) Magnitude of incoming recruitment;

(iv) Projected effort and corresponding catches; and

(v) Status of areas previously closed to surf clam fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

(2) *Public review.* Based on the information presented in the report, and in consultation with the Council, the Secretary will propose an annual surf clam quota and will publish it in the FEDERAL REGISTER. Comments on the proposed annual quotas may be submitted to the Regional Director within 30 days after publication. The Secretary will consider all comments, determine an appropriate annual quota, and publish the annual quota in the FEDERAL REGISTER.

(3) *Adjustments.* If the actual catch of surf clams in any one quarter falls short of the specified quarterly quota, the Regional Director will add the amount of the shortfall to the succeeding quarterly quotas. If the actual catch of surf clams in any quarter exceeds the specified quarterly quota, the Regional Director will subtract the amount of the excess from the succeeding quarterly quotas. The amount from the last calendar quarter will be carried over to the first calendar quarter of the next year.

(4) *Notice.* The Secretary will publish a notice in the FEDERAL REGISTER whenever an adjustment is made to the quarterly quota for surf clams. The Regional Director will send notice of any adjustment of the annual quota to each surf clam processor and to each licensed surf clam vessel operator.

(b) *Surf Clams: Nantucket Shoals Area*—(1) *Annual quota.* The amount of surf clams which may be harvested in the Nantucket Shoals Area by fishing vessels subject to these regulations will be specified annually within the range of 25,000 to 200,000 bushels, using the procedures and criteria set forth in § 652.21(a) (1), (2), and (4).

(2) *Quarterly quotas.* This annual quota will be divided into quarterly quotas in the following proportions: January 1—March 31, 20 percent; April 1—June 30, 30 percent; July 1—September 30, 30 percent; and October 1—December 31, 20 percent. Each fishing quarter will begin on the first Sunday of the new calendar quarter.

(3) *Adjustments.* If the actual catch of surf clams in any one quarter falls short of a quarterly quota, the Regional Director will add the amount of the shortfall proportionately to the remaining quarterly quotas of the year. If the actual catch of surf clams exceeds a quarterly quota, the Regional Director will subtract the amount of the excess proportionately from the succeeding quarterly quotas for the year. The amount from the last calendar quarter will be carried over proportionately to the four quarterly periods of the next year.

(c) *Surf Clams: Georges Bank Area*—(1) *Annual quota.* The amount of surf clams which may be harvested in the Georges Bank Area by fishing vessels subject to these regulations will be specified annually within the range of 25,000 to 300,000 bushels, using the procedures and criteria set forth in § 652.21(a) (1), (2), and (4).

(2) *Quarterly quotas.* This annual quota will be divided into four equal quarterly quotas. Each fishing quarter will begin on the first Sunday of the calendar quarter, beginning January 1, April 1, July 1, and October 1.

(3) *Adjustments.* If the actual catch of surf clams in any one quarter falls short of a quarterly quota, the Regional Director will add the amount of the shortfall proportionately to the remaining quarterly quotas of the year. If the actual catch of surf clams exceeds a quarterly quota, the Regional Director will subtract the amount of the excess proportionately from the succeeding quarterly quotas for the year. The amount from the last quarterly quota in a calendar year will be carried over and added proportionately to the four quarterly quotas of the next year.

(d) *Ocean Quahogs.* The amount of ocean quahogs which may be caught by fishing vessels subject to these regulations will be specified annually between 4,000,000 and 6,000,000 bushels, using the procedures and criteria set forth in § 652.21(a). If necessary, the Regional Director may establish quarterly quotas for ocean quahogs, which will be based on historical fishing patterns. In that event, the Secretary will publish notice of such quarterly quotas in the FEDERAL REGISTER. In the event that the Regional Director establishes quarterly quotas for ocean quahogs, if the actual catch of ocean quahogs falls more than 5,000 bushels short of the specified quarterly quota, he will add the amount of the shortfall to the succeeding quarterly quotas. If the actual catch of ocean quahogs in any quarter exceeds the specified quarterly quota, the Regional Director will subtract the amount of the excess from the succeeding quarterly quotas.

[47 FR 4270, Jan. 29, 1982, as amended at 50 FR 32710, Aug. 14, 1985; 51 FR 17347, May 12, 1986; 52 FR 27817, July 24, 1987]

§ 652.22 Effort restrictions.

(a) *Surf clams—Mid-Atlantic Area*—(1) *The fishing week.* Fishing for surf clams will be authorized only during the period beginning 0001 hours Sunday and ending 1800 hours Thursday.

(2) *Hours*—(i) *Selection.* The Regional Director will notify each owner or operator of a fishing vessel engaged in the Mid-Atlantic Area surf clam fishery concerning the allowable combinations of fishing periods for varying levels of allowable fishing time. The vessel owner or operator must send the Regional Director written notice of the owner or operator's selection or cancellation of allowable surf clam fishing periods for that vessel. All selections or cancellations must be provided to the Regional Director no less than 15 days prior to the intended effective date.

(ii) *Letter of authorization.* The Regional Director will send a letter of authorization to each owner or operator, stating the periods during which the vessel is authorized to fish for surf clams. The letter of authorization must be kept aboard the vessel at all times. Fishing may be conducted only during the times and under those conditions authorized by the Regional Director in the letter of authorization.

(iii) *Authorized periods.* Fishing for any part of an authorized period will be counted as one day of fishing. Only one surf clam fishing trip is allowed per authorized fishing period. Fishermen who land surf clams during an authorized period may not continue to harvest or land surf clams during or after that authorized period.

(iv) *Fishing activity.* In this paragraph, "fishing" means the actual or attempted catching of fish, but not activities in preparation for fishing, such as traveling to or from the fishing grounds. The presence of a vessel's fishing gear in the water at a time which is more than one-half hour before the beginning, or one-half hour after the end, of the vessel's authorized fishing period will be *prima facie* evidence that the vessel is fishing in violation of these regulations.

(3) *Allowable fishing time.* The Regional Director may revise allowable fishing times (hours per week, hours per month, or hours per quarter) to allow fishing for surf clams to be conducted throughout the entire year with the minimum number of changes to fishing times.

(i) *Reduction.* If, on review of the available information and public comment, including current and expected levels of fishing effort, the Regional Director determines during any quarter that the quarterly quota for surf clams [as adjusted under § 652.21(a)(3)] probably will be exceeded, the Secretary may reduce the allowable fishing time.

(ii) *Increase.* If, on review of the available information and public comment, including current and expected levels of fishing effort, the Regional Director determines during any quarter that the quarterly quota of surf clams [as adjusted under § 652.21(a)(3)] probably will not be harvested, and that the catch rate has not diminished as a result of a decline in abundance of stocks of surf clams, the Secretary may increase allowable fishing time to facilitate the harvest of the full quarterly quota.

(4) *Make-up periods.* For each authorized fishing period, during the fishing weeks commencing at 0001 hours on the first Sunday of November and ending at 1800 hours on the last Thursday of April, the owner or operator of a vessel may claim a make-up period if, in his opinion, weather or sea conditions would prevent effective fishing or endanger the vessel or crew.

(b) *Surf clams: Nantucket Shoals Area.* (1) *The fishing week.* Fishing for surf clams will be allowed seven days per week. The fishing week begins at 0001 hours Sunday and ends at 2400 hours Saturday.

(2) *Management measure adjustments.* The Regional Director will monitor the rate of harvest using logbook and other information.

(i) If the Regional Director determines that harvests will remain within the quarterly quotas, no action will be taken.

(ii) When the harvest reaches, or is likely to reach, 50 percent of any quarterly quota, the Regional Director will consult with the Councils to determine the range of trip landing limits to control catch adequately to keep the fishery open for the balance of the quarter. The Secretary may impose trip landing limits, provided those limits are not less than the following:

(A) For vessels between 0 and 50 gross registered tons (Class I), 224 bushels/trip.

(B) For vessels between 51 and 100 gross registered tons (Class II), 416 bushels/trip.

(C) For vessels greater than 101 gross registered tons (Class III), 768 bushels/trip.

(iii) The closure provisions specified in paragraph (d) of this section may be invoked by the Secretary, as required, without consulting the Council.

(iv) Once initial trip limits have been established in consultation with the Councils, the Regional Director will notify the Councils in advance of any proposed action to further specify trip limits or close the fishery.

(v) The Regional Director will consider any comments received from the Councils or the public before implementing any adjustments in the management program.

(c) *Ocean Quahogs*—(1) *Allowable fishing time.* Fishing for ocean quahogs will be allowed seven days per week.

(2) *Revisions.* When 50 percent of the quota of ocean quahogs for any time period indicated in § 652.21(d) of this part has been caught, the Regional Director will, on review of available information and public comment, determine whether the total catch of ocean quahogs during the applicable time period will exceed the quota for that time period. If the Regional Director determines that the quota will be exceeded, the Secretary may reduce the number of days during which fishing for ocean quahogs is allowed.

(d) *Closures.* If the Regional Director determines (based on logbook reports, processor reports, vessel inspections, or other information) that the quota for surf clams or ocean quahogs for any time period will be exceeded, the Secretary will publish a notice in the FEDERAL REGISTER stating the determination and stating a date and time for closure of the fishery.

(e) *Notices.* The Secretary will publish a notice in the FEDERAL REGISTER of any change in allowable fishing times. The Regional Director will send notice of any closure or any change in allowable fishing times to each surf clam or ocean quahog processor and to each surf clam or ocean quahog permit holder.

(f) *Presumption.* (1) The presence of surf clams or ocean quahogs aboard any vessel engaged in the surf clam or ocean quahog fishery, or the presence of any part of a vessel's gear in the water, more than 12 hours after a closure occurs under this section, will be *prima facie* evidence that such vessel was fishing for surf clams or ocean quahogs in violation of these regulations.

(2) The landing or possession of surf clams harvested by a vessel permitted under this FMP on a day during which such vessel was authorized to fish in the EEZ will be *prima facie* evidence that such surf clams were caught in the EEZ and are subject to the Federal size limit.

[47 FR 4270, Jan. 29, 1982, as amended at 49 FR 49094, Dec. 18, 1984; 50 FR 11169, Mar. 20, 1985; 50 FR 32711, Aug. 14, 1985; 50 FR 51533, Dec. 18, 1985; 51 FR 17347, May 12, 1986; 52 FR 27817, July 24, 1987]

§ 652.23 Closed areas.

(a) *Areas closed because of environmental degradation.* Certain areas are closed to all surf clam and ocean quahog fishing because of adverse environmental conditions. These areas will remain closed until the Secretary determines that the adverse environmental conditions have been corrected. If additional areas, due to the presence or introduction of hazardous materials or pollutants, are identified as being contaminated, they may be closed by notice published by the Secretary, after a public hearing is held to discuss and assess the effects of such a closure. The areas currently closed are described as follows:

(1) *Boston Foul Ground.* A waste disposal site known as the "Boston Foul Ground" and located at 42°25′36″ N. latitude and 70°35′00″ W. longitude with a radius of one nautical mile in every direction from that point.

(2) *New York Bight.* A polluted area and waste disposal site known as the "New York Bight Closure" and located at 40°25′04″ N. latitude and 73°42′38″ W. longitude and with a radius of six nautical miles in every direction from that point, extending further northwestward, westward and southwestward between a line from a point on the arc at 40°31′00″ N. latitude and 73°43′38″ W. longitude directly toward Atlantic Beach Light in New York to the limit of state territorial waters of New York; and a line from a point on the arc at 40°19′48″ N. latitude and 73°45′42″ W. longitude to a point at the limt of the state territorial waters of New Jersey at 40°14′00″ N. latitude and 73°55′42″ W. longitude.

(3) *106 Dumpsite.* A toxic industrial dump site known as the "106 Dumpsite" and located between 38°40′00″ N. latitude, and 39°00′00″ N. latitude and between 72°00′00″ W. longitude and 72°30′00″ W. longitude.

(b) *Areas closed because of small surf clams.* Certain areas are closed because they contain small surf clams.

(1) *Closure.* The Secretary may close an area to surf clam and ocean quahog fishing if he determines, based on logbook entries, processors' reports, survey cruises, or other information, that the area contains surf clams of which:

(i) 60 percent or more are smaller than 4½ inches in size, and;

(ii) Not more than 15 percent are larger than 5½ inches in size. (Sizes are measured at the longest dimension of the surf clam.)

(2) *Reopening.* The Secretary may reopen areas or parts of areas closed under paragraph (b)(1) of this section if he determines, based on survey cruises or other information, that:

(i) The average length of the dominant (in terms of weight) size class in the area to be reopened is equal to or greater than the prevailing minimum surf clam size established in accordance with § 652.25 of the regulations; or

(ii) The yield or rate of growth of the dominant size class in the area to be reopened would be significantly enhanced through selective, controlled or limited harvest of surf clams in the area.

(3) *Control of reopened areas.* The Secretary will control the harvest of surf clams from reopened areas separate from the management of the general fishery until the catch per unit of effort in the reopened area is comparable to the average catch per unit of effort in the general fishery, at which time the reopened area will become part of the general fishery. Any of the

following mechanisms may be used to control harvests from the reopened areas:

(i) The Regional Director may request that vessel operators announce their intent to fish within reopened areas.

(ii) The Regional Director may, based on reference to survey information, select an appropriate range of allowable fishing time for the reopened area to achieve parity with fishing practices in the general fishery. The range will be published for notice and comment subject to the procedures established in paragraph (c) of this section. The Regional Director may subsequently adjust fishing time within the range, based on logbook information, to maintain parity with the general fishery. These adjustments while published by notice in accordance with paragraph (c) of this section.

(iii) The Regional Director may set a schedule for vessels to operate in reopened areas if he determines that the number of vessels planning to operate simultaneously in a reopened area exceeds the number which can safely be accommodated in the area, or which can effectively be monitored by enforcement officers.

(iv) If the Regional Director determines, based on resource survey information, that the yield of surf clams in a reopened area will be enhanced by selective thinning of the surf clam population in the area, he may temporarily suspend the surf clam size limit in that area. Areas of this type will be identified and defined in accordance with the notice and comment procedures established in paragraph (c) of this section.

(c) *Procedure.* The Regional Director may hold a public hearing on the proposed closure or reopening of any area under paragraph (a) or (b) of this section. The Secretary will publish notice of any proposed area closure or reopening, including any restrictions on harvest in a reopened area. Comments on the proposed closure or reopening may be submitted to the Regional Director within 30 days after publication. The Secretary will consider all comments and publish the final notice of closure or reopening, and any restrictions on harvest, in the FEDERAL REGISTER. Any adjustment to harvest restrictions in a reopened area will be made by FEDERAL REGISTER notice. The Regional Director will send notice of any action under this paragraph to each surf clam or ocean quahog processor and to each surf clam or ocean quahog permit holder.

(d) *Presumption.* The presence of surf clams or ocean quahogs aboard any fishing vessel, or the presence of any part of the vessel's gear in the water, in closed areas is prima facie evidence that such clams or quahogs were taken in violation of these regulations.

[47 FR 4270, Jan. 29, 1982, as amended at 49 FR 11842, Mar. 28, 1984; 53 FR 4630, Feb. 17, 1988]

§ 652.24 Vessel moratorium.

The moratorium that became effective on November 17, 1977, prohibiting the entry of additional vessels into the surf clam fishery, shall remain in effect in the Mid-Atlantic Area until replaced by a revised limited-entry system.

[47 FR 4270, Jan. 29, 1982]

§ 652.25 Size restrictions.

(a) *Minimum length.* A minimum size limit for surf clams of 5½ inches in length is imposed in all three areas of the fishery with the following exceptions:

(1) *Size limit selections.* The Regional Director will select the size limit, after consultation with the Council, from among the following values: 5½, 5¼, 5, and 4¾ inches. The size limit will be selected to reduce discards of surf clams to less than 30 percent, on average, of trip catches. The Regional Director will monitor current stock assessments, catch reports, and other relevant information concerning the size distribution of the surf clam resource in determining if any adjustment in the size limit is appropriate. The Secretary will publish notice of any adjustments in the FEDERAL REGISTER. The public may comment on the minimum size adjustment for 15 days after the date of publication. After consideration of public comments, the Secretary may publish notice in the

FEDERAL REGISTER of any changes in the adjusted minimum size limit.

(2) *Tolerance.* (i) When the minimum size limit is greater than 4¾ inches, as many as 240 surf clams in any full cage may be less than the legal minimum size, but no more than 50 clams in any full cage may be less than 4¾ inches.

(ii) When the minimum size limit is 4¾ inches, no more than 50 clams in any full cage may be less than 4¾ inches.

(iii) If any inspected cage is found to be in violation of paragraphs (2) (i) through (ii) of this section, all cages in possession landed by the same vessel from the same trip will be deemed in violation of the size limit.

(b) *Measurement.* Length is measured at the longest dimension of the surf clam.

[50 FR 11169, Mar. 20, 1985, as amended at 50 FR 32711, Aug. 14, 1985]

PART 653—RED DRUM FISHERY OF THE GULF OF MEXICO

Subpart A—General Provisions

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AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 51 FR 46679, Dec. 24, 1986, unless otherwise noted.

Subpart A—General Provisions

§ 653.1 Purpose and scope.

The purpose of this part is to implement the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico (FMP) prepared by the Secretary of Commerce and amended by the Gulf of Mexico Fishery Management Council. The regulations in this part, except for § 653.5, apply to fishing for red drum by fishing vessels of the United States in the EEZ in the Gulf of Mexico. The reporting requirements in § 653.5 apply to vessels of the United States and persons participating in the fishery in both the EEZ and State jurisdictions.

[52 FR 34921, Sept. 16, 1987]

§ 653.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Acceptable biological catch (*ABC*) means a range of harvest levels which can be taken from a stock of fish while maintaining the stock at or near maximum sustainable yield and ensuring that recruitment overfishing does not occur. ABC may vary due to fluctuating recruitment, abundance, and intensity of fishing effort.

Commercial fishing (*fishery*) means fishing or fishing activities which result in the harvest of fish one or more of which (or part thereof) is sold, traded or bartered.

Directed commercial red drum fishing (*fishery*) means any commercial fishing activity in which the weight of red drum landed exceeds five percent of the total weight of all other fish on board.

Overfishing means a fishing mortality rate that prohibits attaining the spawning stock goal or threshold, which is established at a 20 percent spawning stock biomass per recruit (SSBR) ratio.

Primary area means the EEZ seaward of the fishery jurisdictions of Alabama, Mississippi, and Louisiana, bounded on the east by a line directly south from the boundary between Alabama and Florida (87°31.1′ W. longitude) to its intersection with the outer limit of the EEZ, and bounded on the west by a line beginning at the boundary between Texas and Louisiana (midpoint between the gulfward extension of the Sabine Pass jetties) to 29°32.1′ N. latitude, 93°47.7′ W. longitude, thence directly south to its intersection with the outer limit of the EEZ.

Processor means a person who processes fish or fish products or parts thereof for commercial use or consumption.

Red drum means *Sciaenops ocellatus*, also called redfish.

Regional Director means the Director, Southeast Region, NMFS, Duval Building, 9450 Koger Boulevard, St. Petersburg, FL 33702 (telephone 813-893-3141), or a designee.

Science and Research Director means the Science and Research Director, Southeast Fisheries Center NMFS, 75 Virginia Beach Drive, Miami, FL 33149, telephone 305-361-5761, or a designee.

Secondary areas means (a) the EEZ seaward of the fishery jurisdiction of Florida in the Gulf of Mexico and (b) the EEZ seaward of the fishery jurisdiction of Texas, with boundaries consistent with the immediately adjacent boundaries described for the primary area. For the purposes of this definition, the eastern boundary of the EEZ in the Gulf of Mexico is a line from the outer limit of the EEZ north along 83°00′ W. longitude to the outer limit of the waters of Florida off the Dry Tortugas Islands, thence in a clockwise direction around that outer limit to 24°35′ N. latitude, thence east along 24°35′ N. latitude to the outer limit of the waters of Florida off the Marquesas Keys.

Spawning stock biomass per recruit (SSBR) ratio is an index of the impact of fishing mortality on the lifetime reproductive potential of recruits to the population. With no fishing mortality, the SSBR is 100 percent. Combinations of fishing mortality and the average age at which a year class becomes subject to exploitation in the fishery give rise to lower levels of SSBR, all of which can be expressed as percentages of the maximum.

Total allowable catch (TAC) means the maximum permissible annual harvest from the primary area set from within or below the ABC range after consideration of biological, economic, and social factors and the risk of inducing recruitment overfishing associated with that harvest level.

[51 FR 46679, Dec. 24, 1986, as amended at 52 FR 34921, Sept. 16, 1987; 53 FR 24655, 24664, June 29, 1988; 53 FR 38294, Sept. 30, 1988]

§ 653.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraphs (b) and (c) of this section.

(b) These regulations apply within the boundaries of any national park, monument, or marine sanctuary in the Gulf of Mexico.

(c) At such time as a TAC is specified, a person landing red drum other than from a directed commercial red drum fishery, must comply with the landing and possession laws of the State where landed.

[51 FR 46679, Dec. 24, 1986, as amended at 53 FR 24655, 24664, June 29, 1988]

§ 653.4 Permits and fees. [Reserved]

[51 FR 46679, Dec. 24, 1986 and 53 FR 24664, June 29, 1988]

§ 653.5 Recordkeeping and reporting.

(a) *Dealers and processors.* Dealers and processors of red drum harvested from or landed in the Gulf of Mexico and who are selected by the Science and Research Director must report to the Science and Research Director such information as he may request and in the form and manner as he may require. The information required to be submitted must include, but is not necessarily limited to, the following:

(1) Dealer's or processor's name and address;

(2) State and county where red drum were landed; and

(3) Total poundage of red drum received during the reporting period, by each type of gear used for harvest.

(b) *Inspection.* The owner or operator of commercial, charter, or recreational vessels, and dealers or processors of red drum are required upon request to make red drum or parts thereof available for inspection by the Science and Research Director for the collection of additional information or for inspection by an authorized officer.

[51 FR 46679, Dec. 24, 1986, as amended at 53 FR 24656, 24664, June 29, 1988; 53 FR 38294, Sept. 30, 1988]

§ 653.6 Vessel identification. [Reserved]

§ 653.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Conduct fishing operations in a way that causes wastage of red drum as specified in § 653.22(b).

(b) Falsify or fail to report information required to be submitted by § 653.5(a).

(c) Fail to make fish available for inspection as required by § 653.5(b).

(d) Retain on board a vessel or possess red drum in or from the secondary or primary areas of the EEZ as specified in § 653.22(a).

(e) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search in the process of enforcing this part.

[51 FR 46679, Dec. 24, 1986, as amended at 52 FR 34922, Sept. 16, 1987; 53 FR 24657, 24664, June 29, 1988]

§ 653.8 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 653.9 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

Subpart B—Management Measures

§ 653.20 Fishing year.

The fishing year for red drum begins on January 1 and ends on December 31.

[53 FR 24664, June 29, 1988]

§ 653.21 Quotas.

TAC is zero for each fishing year.

[53 FR 24664, June 29, 1988]

§ 653.22 Harvest and landing limitations.

(a) *Harvest from the EEZ.* No red drum may be harvested or possessed in or from the secondary or primary areas of the EEZ. Red drum caught in the EEZ must be released immediately with a minimum of harm.

(b) *Wastage prohibited.* A person or vessel must conduct fishing operations in a way that minimizes wastage of red drum.

[52 FR 34922, Sept. 16, 1987, as amended at 53 FR 24664, June 29, 1988]

§ 653.23 Closures. [Reserved]

[52 FR 34922, Sept. 16, 1987, as amended at 53 FR 24664, June 29, 1988]

§ 653.24 Allowable catch and allocation procedures.

(a) Prior to October 1, each year, the Science and Research Director will:

(1) Update the stock assessment for red drum;

(2) Reassess the MSY level;

(3) Specify the best estimate of the standing stock and its age composition;

(4) Re-examine the spawning stock requirements (established as a spawning stock goal or threshold of a 20-percent SSBR ratio in relation to an unfished stock) and specify escapement levels of juvenile fish necessary to achieve these requirements;

(5) Specify the geographical variations in stock abundance, mortality, juvenile escapement, and recruitment;

(6) Summarize current and historical information on migratory movements of the stock; and

(7) Analyze social and economic data available in the fishery.

(b) The Council will appoint a scientific assessment group that will review the Science and Research Director's reports, current harvest statistics, and economic, social, and other relevant data and will prepare a written assessment report to the Council specifying a range of ABC for the primary area. The report will

(1) Set forth a risk analysis showing the probabilities of adversely impacting the spawning stock biomass (SSB) at each level of ABC and the economic and social impacts of those levels;

(2) Include consideration of fishing mortality rates, abundance relative to the established spawning stock goal or threshold, trends in recruitment, and whether overfishing is occuring.

(3) In specifying ABC, separately identify the quantity of the offshore

population, in excess of the spawning stock goal or threshold, that may be harvested.

(4) When requested by the Council, include information on the levels of bag limits, size limits, specific gear harvest limits, and other restrictions required to attain the necessary escapement goal or prevent a user group from exceeding its allocation or quota under a TAC specified by the Council and on the economic and social impacts of such limits and restrictions.

(c) The Council will consider the report and recommendations of the scientific assessment group and relevant public comments. A public hearing will be held at the time and place the Council takes action on the report. Other public hearings may be held. The Council may convene its Red Drum Advisory Panel and Scientific and Statistical Committee to provide advice before taking action.

(d) In specifying TAC, the Council will consider the recommendations, comments, and advice provided for in paragraphs (b) and (c) of this section and will set TAC from within or below the ABC range by FMP amendment.

(e) If an offshore population (above annual surplus production) exceeds a SSB necessary to optimize recruitment, the percentage of the excess which may be included in the TAC will be set by the Council periodically but no more frequently than annually.

(f) The Council will make changes in use group allocations for the primary area, if any, by FMP amendment.

[52 FR 34922, Sept. 16, 1987, as amended at 53 FR 24664, June 29, 1988; 53 FR 38294, Sept. 30, 1988]

§ 653.25 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

PART 654—STONE CRAB FISHERY

Subpart A—General Measures

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654.2 Definitions.
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654.4 Markings.
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Subpart B—Management Measures

654.20 Catch limitations.
654.21 Gear requirements.
654.22 Closed seasons.
654.23 Area restrictions.
654.24 Zone modification procedures.
654.25 Specifically authorized activities.

AUTHORITY: 16 U.S.C. 1801 *et seq.*.

Subpart A—General Measures

§ 654.1 Purpose and scope.

The regulations in this part govern fishing for stone crabs by fishing vessels of the United States within that portion of the Gulf of Mexico along the west coast of Florida, including the Keys, in which the United States exercises exclusive fishery management authority under the Act. The regulations also affect vessels of the United States in the trawl fishery in that area.

[44 FR 53527, Sept. 14, 1979]

§ 654.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Biodegradable Panel means a panel constructed of wood or cotton material and located on the trap, at least two slats above the bottom, or on the top of the trap, which, when removed, will leave an opening in the trap measuring at least 2½" x 5".

Committee means Pasco, Hernando, and Citrus Counties Shrimping and Crabbing Advisory Committee or any successor committee designated as such by Florida.

Council means the Gulf of Mexico Fishery Management Council, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609.

FDNR means the Florida Department of Natural Resources.

FMFC means the Florida Marine Fisheries Commission.

FMP means the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico.

Live box means a container used for holding live stone crabs on board a vessel.

Management area means that area of the FCZ adjacent to the territorial sea off the west coast of Florida and off the south side of the Florida Keys.

Regional Director means the Regional Director, Southeast Region, Duval Building, 9450 Koger Boulevard. St. Petersburg, FL 33702.

Stone crab means *Menippe mercenaria, M. adina*, or the hybrid, *M. adina* X *M. mercenaria.*

[44 FR 53527, Sept. 14, 1979, as amended at 47 FR 3795, Jan. 27, 1982; 47 FR 41757, Sept. 22, 1982; 49 FR 30715, Aug. 1, 1984; 52 FR 36781 Oct. 1, 1987; 52 FR 36941, Oct. 2, 1987; 53 FR 24655, June 29, 1988; 53 FR 38294, Sept. 30, 1988]

§ 654.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraphs (b) and (c) of this section.

(b) *Federal.* The regulations in this part are intended to be compatible with, and do not supersede similar regulations in effect for the Everglades National Park (36 CFR 7.45).

(c) *State.* The regulations in this part are intended to be compatible with similar regulations and statutes in effect in Florida.

[44 FR 53527, Sept. 14, 1979, as amended at 53 FR 24655, June 29, 1988]

§ 654.4 Markings.

(a) *General.* No vessel other than a vessel of the United States which is properly registered, documented, or numbered may fish for stone crabs in the management area.

(b) *Markings.* (1) Buoys and traps must bear the number and color that correspond with their Florida stone crab permit number and color or their Federal number and color.

(2) Each vessel fishing for stone crabs in the management area must be marked by its appropriate documentation or registration number and must be marked by the appropriate stone crab number and color.

(3) All markings must be permanent. Vessel markings must be of a size and location so as to be visible from the air. Buoy and trap markings must be of such size and color so as to permit ready identification of the gear.

(c) *Application to the Regional Director.* (1) Persons who cannot obtain a Florida stone crab permit may apply to the Regional Director who will assign a Federal number and color to the vessel and its gear.

(2) Each application must contain the following information:

(i) The applicant's name, mailing address, and telephone number;

(ii) The name of the vessel;

(iii) The vessel's United States Coast Guard documentation number or State license number; and

(iv) The vessel's radio call sign.

(d) *Fees.* No fee is required for a number and color issued by the Regional Director under this part.

[44 FR 53527, Sept. 14, 1979, as amended at 48 FR 34762, Aug. 1, 1983; 52 FR 36781, Oct. 1, 1987; 53 FR 24657, June 29, 1988]

§ 654.5 [Reserved]

§ 654.6 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for stone crabs in the EEZ with other than a U.S. vessel which is properly documented, registered, or numbered as required in § 654.4(a).

(b) Falsify or fail to display the vessel's appropriate documentation or registration number and the appropriate stone crab number and color code as specified in § 654.4(b) (2) and (3).

(c) Falsify or fail to mark all stone crab traps and trap buoys with their Florida permit number and color code or their Federal number and color code as specified in § 654.4(b) (1) and (3).

(d) Remove from stone crabs; or possess in the EEZ, regardless of where taken, stone crab claws with a propodus (Figure 2) measuring less than 2¾ inches; or remove, possess, or land stone crab claws from stone crabs taken in the EEZ with a propodus measuring less than 2¾ inches, as specified in § 654.20(a).

(e) Fail to return declawed stone crabs to the sea prior to the vessel's reaching port, shore, or dock as specified in § 654.20(b).

(f) Fail to store stone crabs at sea in containers protected from direct sunlight and in a manner which does not compress the crabs, as specified in § 654.20(b).

(g) Fail to keep stored stone crabs damp by wetting as necessary, as specified in § 654.20(b).

(h) Tend, open, pull, or otherwise molest or have in possession aboard a vessel another person's stone crab traps, except as specified in § 654.20(c).

(i) Tend, open, pull, or otherwise molest stone crab traps, except during the hours specified in § 654.20(d).

(j) Possess at sea, land, or fail immediately to return to the sea egg-bearing female stone crabs or to remove eggs or claws from egg-bearing female stone crabs, as specified in § 654.20(e).

(k) Take or possess stone crabs or any part thereof in the EEZ during the closed season specified in § 654.22(a); except as provided by § 654.22(a)(3).

(l) Have stone crab traps in the water before or after the dates specified in § 654.22(a).

(m) Trawl in a closed area of the EEZ during the time periods specified in § 654.23(a).

(n) Place stone crab traps in a closed area in the EEZ, as specified in § 654.23(b)(1).

(o) Place into the EEZ any article, as specified in § 654.23(b)(2).

(p) Fail to have on board or present for inspection an extension authorization, as required under § 654.22(a)(2).

(q) Use stone crab traps without a biodegradable panel, as required under § 654.21.

[44 FR 53527, Sept. 14, 1979, as amended at 51 FR 30664, Aug. 28, 1986; 53 FR 24657, June 29, 1988]

§ 654.7 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 654.8 Penalties.

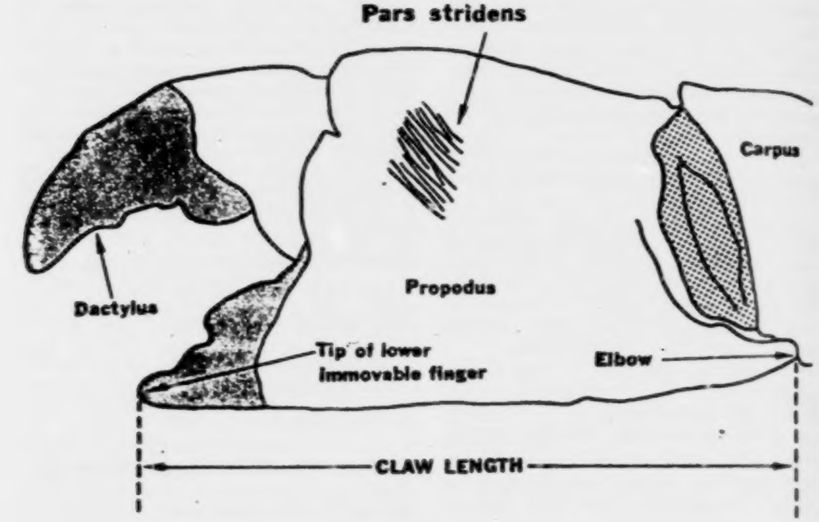
See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

Subpart B—Management Measures

§ 654.20 Catch limitations.

(a) *Claw Size.* No person may remove a stone crab claw with a propodus measuring less than 2¾ inches from the body of a stone crab. Stone crab claws are measured in a straight line from the elbow to the tip of the lower immovable finger (see Figure 2). The propodus is the largest section of the claw assembly that has both a movable and immovable finger and is located farthest from the body when the entire appendage is extended.



(FIGURE 2)

(b) *Holding crabs aboard fishing vessels.* Stone crab bodies from which the claws have been removed must be returned to the sea before the vessel reaches shore or a port or a dock. Live stone crabs may be held aboard a vessel while it is at sea until such time as the claws are removed, provided the crabs are held in containers shaded from direct sunlight and are wet with sea water as necessary to keep the crabs in a damp condition. Containers holding stone crabs must be stacked in a manner which does not compress the crabs.

(c) *Traps.* No fisherman may willfully tend, open, pull, or otherwise molest another fisherman's traps without the prior written consent of that fisherman. (The buoy and corresponding lines are part of the trap for purposes of this section.)

(d) *Time of day.* No fisherman may tend, open, pull, or otherwise molest traps during the period beginning one hour after sunset to one hour before sunrise.

(e) *Egg-bearing female crabs.* It is prohibited to remove claws from egg-bearing female stone crabs or to have any egg-bearing female stone crabs aboard a vessel or to remove the eggs from any stone crab. Egg-bearing female stone crabs must be returned to the sea immediately.

[44 FR 53527, Sept. 14, 1979, as amended a 51 FR 30664, Aug. 28, 1986; 52 FR 36782 Oct. 1, 1987; 53 FR 24657, June 29, 1988]

§ 654.21 Gear requirements.

Traps used in the stone crab fishery must have a biodegradable panel. (See definition in § 654.2.)

[44 FR 53527, Sept. 14, 1979]

§ 654.22 Closed seasons.

(a) No person may possess stone crabs or any parts thereof in the EEZ during the period from 0001 hours (local time) May 16 through 2400 hours (local time) October 14.

(1) Prior to the fishing season, baited traps may be placed in the water one hour before sunrise on October 5 (soak period).

(2) After the fishing season, traps must be removed from the water by one hour after sunset on May 20 (removal period); unless an extension to the removal period is granted by Florida in accordance with Chapter 46-13, Stone Crab, Rules of the Department of Natural Resources, FMFC, Florida Administrative Code. The extension authorization must be carried aboard the fishing vessel. The operator of a fishing vessel must present the authorization for inspection upon request of an authorized officer.

(3) Holding crabs in traps while in the water during the soak period (October 5-14), or during the removal period (May 16-20), or during an extension thereto, will not be deemed as possession provided that such crabs are returned immediately to the water with claws unharvested whenever the traps are removed from the water during these periods.

(4) No traps may be transported on or set in the waters of the EEZ between one hour after sunset on May 20 (or May 30, if an extension to the removal period is granted) and one hour before sunrise on October 5.

(b) Stone crab traps, floats, or ropes in the management area at times not authorized in paragraph (a) of this section will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Secretary or an authorized officer. Owners of these stone crab traps remain subject to appropriate civil penalties.

[51 FR 30664, Aug. 28, 1986, as amended at 52 FR 36782, Oct. 1, 1987; 53 FR 24657, June 29, 1988]

§ 654.23 Area restrictions.

(a) Between January 1 and one hour after sunset (local time) May 20, it is unlawful to use trawl gear in that part of the EEZ (Figure 1) shoreward of a rhumb line connecting in order points B at 26°16.0′ N. latitude, 81°58.5′ W. longitude, C at 26°00.0′ N. latitude, 82°04.0′ W. longitude, D at 25°09.0′ N. latitude, 81°47.6′ W. longitude, E at 24°54.5′ N. latitude, 81°50.5′ W. longitude, and the intersection of the seaward boundary of Florida and a line extending from point E to point F at 24°41.9′ N. latitude, 81°40.5′ W. longitude (Snipe Point).

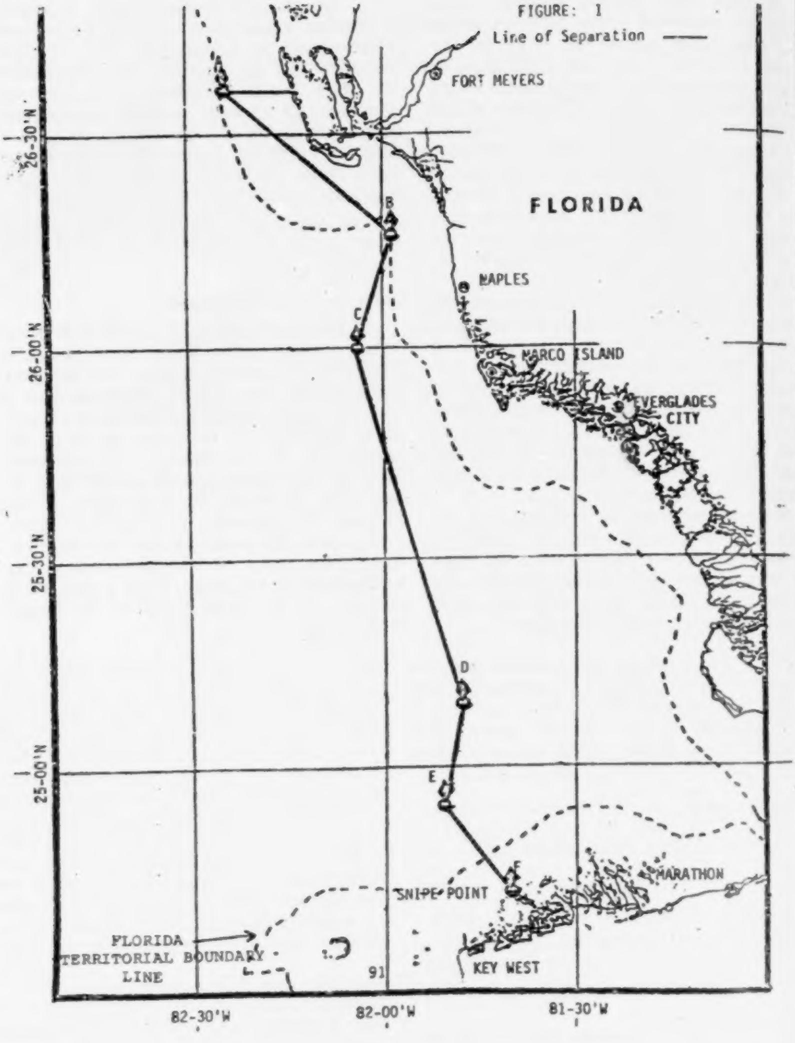


FIGURE: I
Line of Separation
FORT MEYERS
FLORIDA
B
NAPLES
C
MARCO ISLAND
EVERGLADES CITY
D
E
F
MARATHON
SNIPE POINT
KEY WEST
FLORIDA TERRITORIAL BOUNDARY LINE
91
26-30'N
26-00'N
25-30'N
25-00'N
82-30'W
82-00'W
81-30'W

(b)(1)(i) No person may place stone crab traps in that part of the EEZ identified as Zone IV (Figure 3) during the period 0001 hours October 5 to 2400 hours December 1 and during the period 0001 hours April 2 to 2400 hours May 20. Zone IV is bounded by a continuous line connecting points expressed by latitude and longitude (LORAN notations are unofficial, and are included only for the convenience of fishermen):

ZONE IV

Point	Latitude	Longitude	LORAN chain 7980		
			X	Y	Z
V	28°41'39" N	82°54'08" W	31303.0	45183.1	62961.5
E	28°41'39" N	82°55'18" W	31301.0	45193.1	62970.0
O	28°30'51" N	82°55'06" W	31242.7	45104.3	62970.0
S	28°30'51" N	82°52'54" W	31247.6	45086.8	62955.0
Z	28°37'44" N	82°53'02" W	31284.3	45143.0	62955.0

Thence northerly along the State boundary to point V.

(ii) No person may place stone crab traps in that part of the EEZ identified as Zone V (Figure 3) during the period 0001 hours October 5 to 2400 hours November 30 and during the period 0001 hours March 16 to 2400 hours May 20. Zone V is bounded by a continuous line connecting points expressed by latitude and longitude (LORAN notations are unofficial and are included only for the convenience of fishermen):

ZONE V

Point	Latitude	Longitude	LORAN chain 7980		
			X	Y	Z
W	28°49'25" N	82°55'49" W	31341.2	45260.0	62971.2
G	28°48'55" N	82°56'19" W	31337.8	45260.0	62975.0
F	28°41'39" N	82°56'06" W	31299.2	45199.1	62975.0
V	28°41'39" N	82°54'08" W	31303.00	45183.1	62961.5

ZONE V—Continued

Point	Latitude	Longitude	LORAN chain 7980		
			X	Y	Z
Thence northerly along the State boundary to point W.					

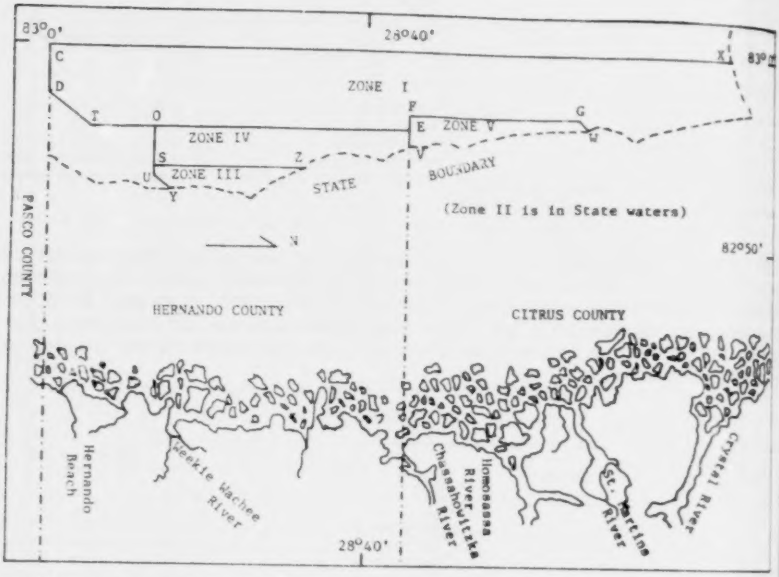

83°0'
28°40'
C
X
83°
D
ZONE I
F
G
I
O
E
ZONE V
ZONE IV
V
W
S
Z
U
ZONE III
BOUNDARY
Y
STATE
(Zone II is in State waters)
PASCO COUNTY
N
82°50'
HERNANDO COUNTY
CITRUS COUNTY
Hernando Beach
Weekie Wachee River
Chassahowitzka River
Homosassa River
St. Martins River
Crystal River
28°40'

Figure 3 Chart delineating areas closed to fishing for shrimp or stone crabs (not to scale, for illustrative purposes only).

(2) No person may place into the management area any article, including fishing gear, with the intent to interfere with fishing or obstruct or damage fishing gear or fishing vessels of others, to utilize willfully fishing gear in such a fashion that it obstructs or damages the fishing gear or fishing vessel of another.

(3) Stone crab traps found in the area described in paragraph (b)(1) of this section during the closed period will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Secretary or an authorized officer. Lines and buoys are considered part of the trap. Owners of these stone crab traps are subject to civil penalties. All stone crab traps fished in the EEZ will be presumed to be the property of the most recently documented owner.

[47 FR 41758, Sept. 22, 1982, as amended 49 FR 30715, Aug. 1, 1984; 49 FR 39163, Oct. 4, 1984; 50 FR 25713, June 21, 1985; 52 FR 36782, Oct. 1, 1987; 53 FR 24657, June 2 1988]

§ 654.24 Zone modification procedures.

(a) *Procedure for modifying existing restricted fishing areas for stone crab fishermen in the EEZ* (inshore of 83.0 W. longitude) *off Pasco, Hernando and Citrus Counties, Florida, by notice.* (1) The Pasco, Hernando, and

Citrus Counties Shrimping and Crabbing Advisory Committee (Committee) may propose modifications to the exclusive fishing areas for shrimping and for crabbing provided by § 654.23 to resolve any conflict in both State waters and the EEZ inshore of 83.0° W. longitude, at its public meetings. Such a zoning proposal for fishing areas may be initiated at any time by the Committee in response to changing conditions in the fishery and may include zoning configurations that fluctuate or change on specific dates to allow for optimum production by the user groups affected.

(2) The Committee will submit the zoning proposal to the State regulatory agencies, Florida Department of Natural Resources (FDNR) and FMFC, for implementation in State waters and may submit the proposal to the Council for initial review and comment.

(3) After the State has accepted the proposal for promulgation as a rule, the State may request that the Council adopt that portion of the zoning proposal relating to the EEZ. The Council will review the proposal and administrative record developed by the State in support of its proposed rule and will recommend to the Regional Director that the proposal be implemented (or not implemented) or implemented with minor modifications in the EEZ. If the Council or Regional Director determine that the opportunity for public comment through the State system was inadequate, they may hold public hearings on the zoning proposal affecting the EEZ. The Council may also avail itself of the advice and counsel of its Scientific and Statistical Committee, Shrimp and Stone Crab Advisory Panels, or an Ad Hoc Advisory Panel consisting of persons fishing the Federal waters, in the review of the proposal or to propose zoning modifications. Should the Council recommend that the Federal portion of the proposal not be implemented or be modified, it will immediately notify the State and specify its reasons for such action.

(4) If the Secretary, after receiving the recommendations of the Council, concludes that such recommendations are consistent with the objectives of the FMP, the Magnuson Act, or other applicable law, the Secretary will implement them by notice in the FEDERAL REGISTER. If the Regional Director determines that the recommended action of the Council should not be implemented, the Regional Director will immediately notify the Council and State of his reasons and may suggest an alterative to the recommended action. The Council, after conferring with the State, will immediately advise the Regional Director as to the acceptability of the alternative.

(5) In the event that the Committee fails to act or is unable to develop a compromise solution for fishing in the area, or if the Committee is abolished or otherwise becomes nonfunctional, the Council will call upon the FMFC to provide the recommendations under paragraphs (a)(1) and (2) of this section. The Council may then utilize its own Ad Hoc Advisory Panel consisting of fishermen from the area affected to advise the Council on the acceptability of these recommendations or to propose zoning modifications.

(6) If the Committee is enlarged or restructured to have authority over zoning for other counties, the restructured committee may provide recommendations under paragraphs (a)(1) and (2) of this section and the Secretary may implement such recommendations under paragraph (a)(4) of this section.

(7)(i) The Secretary may, with the concurrence of the Council, modify existing zoning by publishing a notice in the FEDERAL REGISTER if the Regional Director determines that the procedures in paragraphs (a)(1) through (5) of this section cannot be followed in time to prevent inequitable access to the resources.

(ii) The Secretary will invite public comment prior to the effective date of the notice. If the Secretary determines, for good cause, that a notice must be promulgated immediately, comments will be received for 15 days after the effective date of the notice.

(iii) As soon as practicable after the end of the comment period, the Secretary will either rescind, modify, or allow the modification to the existing zoning to remain unchanged through notice in the FEDERAL REGISTER.

(8)(i) In the event that the Regional Director determines that the procedural paragraphs (a)(1) through (5) of this section cannot be followed in time to resolve or prevent serious conflict the Secretary may, with the concurrence of the Council, publish a notice in the FEDERAL REGISTER to:

(A) Close the area or a portion thereof to stone crab fishing for a period not to exceed 30 days; and/or

(B) Modify the configuration of the existing boundaries of the fishing areas as specified in the rule in the EEZ for part of or for the duration of the stone crab season and close the fisheries in the areas affected for 10 days to allow movement of crab traps into the crabbing areas specified in the rule.

(ii) Not later than 72 hours after the effective date of the modification to the regulation under paragraph (b)(1) of this section, the Regional Director will conduct a public fact-finding hearing. Notice of such hearing will be provided to the following:

(A) The Chairman of the council or his designee;

(B) The Director of the FDNR or his designee;

(C) The Chairman of the FMFC or his designee;

(D) Local news media as may be appropriate;

(E) Such user group representatives or organizations as may be appropriate and practicable; and

(F) Others deemed appropriate by the Regional Director.

(iii) The fact-finding hearing will be for the purpose of evaluating the following:

(A) The existence and seriousness of the conflict needing resolution by the modification to the existing rule;

(B) The appropriate duration of the modification to the existing rule;

(C) Other solutions to the conflict; and

(D) Other relevant matters.

(iv) The Secretary, within ten days after conclusion of the fact-finding hearing will either rescind, modify or allow the modification to the existing rule to remain unchanged through notice in the FEDERAL REGISTER.

(b) The Secretary, in consultation with or based on recommendations by the Council, may by regulatory amendment, take such action as may be necessary and appropriate to resolve any conflict in the area off Pasco, Hernando, and Citrus Counties, Florida (inshore of 83.0° W. longitude) or any other part of the EEZ, provided such action is taken in a manner which to the maximum extent practicable is consistent with action recommended by or taken by the adjacent coastal State.

(c) Nothing contained in this section limits the authority of the Secretary to issue emergency regulations under section 305(e) of the Magnuson Act.

[49 FR 30716, Aug. 1, 1984, as amended at 53 FR 24657, June 29, 1988]

§ 654.25 Specifically authorized activities.

The Regional Director may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

[47 FR 3795, Jan. 27, 1982. Redesignated at 49 FR 30716, Aug. 1, 1984]

PART 655—ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FISHERIES

Subpart A—General Provisions

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AUTHORITY: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 655.1 Purpose and scope.

(a) The regulations in this part govern fishing for Atlantic mackerel, *Illex*, *Loligo*, and butterfish by fishing vessels of the United States in the EEZ off the coasts of the Atlantic States.

(b) The regulations governing fishing for Atlantic mackerel, *Illex, Loligo,* and butterfish by vessels other than vessels of the United States are contained in 50 CFR Part 611.

(c) This part implements the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries of the Northwest Atlantic Ocean.

[48 FR 14556, Apr. 4, 1983, as amended at 53 FR 24660, June 29, 1988]

§ 655.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Atlantic butterfish or *butterfish* means the species *Peprilus triacanthus.*

Atlantic mackerel or *mackerel* means the species *Scomber scombrus.*

Charter or *party boat* means any vessel which carries passengers for hire to engage in fishing.

Fishery management plan (FMP) means the Fishery Management Plans for the Atlantic Mackerel, Squid and Butterfish Fisheries of the Northwest Atlantic Ocean, as consolidated by amendment 3 and revised by subsequent amendments.

Fishing trip or trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port.

Illex means the species *Illex illecebrosus* (short-finned or summer squid).

Joint venture harvest means U.S.-harvested Atlantic mackerel, squid, or butterfish transferred to foreign vessels in the EEZ or in the internal waters of a State. Transfers to foreign vessels in the internal waters of a State are governed under section 306(c) of the Magnuson Act.

Loligo means the species *Loligo pealei* (long-finned or bone squid).

Metric ton (mt) means 1,000 kilograms, or 2,204.6 pounds.

Regional Director means the Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm St., Federal Building, Gloucester, MA, or a designee.

Squid means *Loligo pealei* and *Illex illecebrosus.*

Vessel length means that length set forth in U.S. Coast Guard or State records.

[48 FR 14556, Apr. 4, 1983, as amended at 48 FR 44839, Sept. 30, 1983; 48 FR 45404, Oct. 5, 1983; 49 FR 406, 407, Jan. 4, 1984; 53 FR 24655, 24660, June 29, 1988]

§ 655.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) Vessels fishing within the regulated mesh area defined at § 651.20 of this chapter with cod end mesh size of less than 5.5 inches must apply to fish under the exempted fishery program as set forth in § 651.22 of this chapter.

[53 FR 24657, June 29, 1988]

§ 655.4 Vessel permits.

(a) *General.* Any vessel of the United States which catches Atlantic mackerel, *Illex* and *Loligo* squid, or butterfish must have a permit issued under this section except vessels used by recreational fishermen taking Atlantic mackerel, *Illex* and *Loligo* squid, or butterfish for the personal use of such recreational fishermen.

(b) *Application.* (1) Each applicant must submit a permit application signed by the owner or operator of the vessel on an appropriate form obtained from the Regional Director before November 1 of each year or at least 30 days before the date on which the applicant desires to have the permit made effective.

(2) Applicants shall provide all the following information:

(i) The name, mailing address including zip code, and telephone number of the owner of the vessel;

(ii) The name of the vessel;

(iii) The vessel's U.S. Coast Guard documentation number, or the vessel's State registration number for vessels not required to be documented under provisions of Title 46 of the U.S. Code;

(iv) The home port or principal port of landing, gross tonnage, radio call sign, and length of the vessel;

(v) The engine horsepower of the vessel and the year the vessel was built;

(vi) The type of construction, type of propulsion, and the type of echo sounder of the vessel;

(vii) The permit number of any current or previous Federal fishing permit issued to the vessel;

(viii) The approximate fish hold capacity of the vessel;

(ix) The type and quantity of fishing gear used by the vessel;

(x) The average size of the crew, which may be stated in terms of a range; and

(xi) The quantity of *Loligo* and *Illex* squid, Atlantic mackerel, and butterfish landed during the year prior to the year for which the permit is being applied; and

(xii) Any other information concerning vessel characteristics requested by the Regional Director.

(3) Any change in the information specified in paragraph (b)(2) of this section must be reported by the applicant in writing to the Regional Director within 15 days of the change.

(c) *Issuance.* The Regional Director will issue a permit to the applicant no later than 30 days from the receipt of a completed application.

(d) *Expiration.* A permit will expire upon any change in vessel ownership, registration, name, length, gross tonnage, fish hold capacity, home port, or the regulated fisheries in which the vessel is engaged or on December 31 of the year for which the permit was issued.

(e) *Duration.* A permit is valid until it expires or is revoked, suspended, or modified pursuant to Subpart D of 15 CFR Part 904.

(f) *Alteration.* Any permit which has been altered, erased, or multilated is invalid.

(g) *Replacement.* Replacement permits may be issued by the Regional Director when requested in writing by the owner or operator stating the need for replacement, the name of the vessel, and the fishing permit number assigned. An application for a replacement permit will not be considered a new application.

(h) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the fishing vessel and owner for which it is issued.

(i) *Display.* Any permit issued under this part must be carried on board the fishing vessel at all times. The operator of a fishing vessel shall present the permit for inspection upon request by any Authorized Officer.

(j) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

(k) *Fees.* No fee is required for any permit issued under this part.

[48 FR 14556, Apr. 4, 1983, as amended at 49 FR 1043, Jan. 6, 1984; 49 FR 41063, Oct. 19, 1984; 51 FR 10550, Mar. 27, 1986]

§ 655.5 Recordkeeping and reporting. [Reserved]

[53 FR 24656, June 29, 1988]

§ 655.6 Vessel identification.

(a) *Official number.* Each fishing vessel subject to this part over 25 feet in length must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from above.

(b) *Numerals.* The official number must contrast with the background and be in block Arabic numerals at least 18 inches in height for vessels equal to or over 65 feet, and at least 10 inches in height for all other vessels over 25 feet in length.

(c) The official number must be permanently affixed to or painted on the vessel. However, charter or party boats may use non-permanent markings to display the official number whenever the vessel is fishing for Atlantic mackerel, squid, or butterfish.

(d) *Duties of operator.* The operator of each vessel subject to this part shall:

(1) Keep the vessel name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

[48 FR 14556, Apr. 4, 1983, as amended at 48 FR 44839, Sept. 30, 1983]

§ 655.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chap ter, it is unlawful for any person to do any of the following:

(a) To fish commercially for Atlantic mackerel, squid, and butterfish without a permit issued pursuant to § 655.4.

(b) To use any vessel for taking, catching, harvesting, or landing of any Altantic mackerel, squid, or butterfish (except as provided in § 655.4 (a)) unless the vessel has on board a valid permit issued under § 655.4.

(c) To fail to report to the Regional Director within 15 days any change in the information contained in the permit application for a vessel, as specified in § 655.4(b).

(d) To falsify or fail to affix and maintain vessel markings as required by § 655.6.

(e) To take and retain, or land more Atlantic mackerel, squid, or butterfish than specified under a notice issued under § 655.24.

(f) To falsify the records and reports prescribed by these regulations.

(g) Violate any other provision of this part, the Magnuson Act, any notice issued under Subpart B of this part, or any other regulation or permit promulgated under the Magnuson Act.

(h) To make any false statement, written or oral, to an authorized officer, concerning the taking, catching, landing, purchase, sale, or transfer of any mackerel, squid, or butterfish.

(i) To interfere with, obstruct, delay, or prevent by any means the lawful investigation or search conducted in the process of enforcing this part.

[48 FR 14556, Apr. 4, 1983, as amended at 48 FR 44839, Sept. 30, 1983; 51 FR 10550, Mar. 27, 1986; 53 FR 24657, June 29, 1988]

§ 655.8 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 655.9 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

Subpart B—Management Measures

§ 655.20 Fishing year.

The fishing year is the 12-month period beginning on January 1 and ending on December 31.

[51 FR 10550, Mar. 27, 1986]

§ 655.21 Allowable levels of harvest.

(a) *Maximum optimum yields.* (1) The optimum yields (OYs) during a fishing year may not exceed the following amounts:

Illex	30,000 mt.
Loligo	44,000 mt.
Butterfish	16,000 mt.

(2) For Atlantic mackerel, the maximum OY is determined in accordance with paragraph (b)(2)(ii) of this section.

(b) *Annual specifications.* Total allowable biological catch (ABC), initial optimum yield (IOY), and amounts for domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable level of foreign fishing (TALFF) for each species will be determined annually by the Regional Director, in consultation with the Mid-Atlantic Fishery Management Council (Council) under the procedures specified in § 655.22, consistent with the following:

(1) *Squid.* (i) Total allowable biological catch (ABC) for any fishing year is either the maximum OY specified in paragraph (a)(1) of this section, or a lower amount determined by the Regional Director, in consultation with the Council, if stock assessments or other ecological data indicate that the potential yield is less than the maximum OY level.

(ii) The IOY consists of an initial DAH and initial TALFF and represents a modification of ABC, based on economic factors. These factors must include the following:

(A) Total world export potential by squid-producing countries;

(B) Total world import demand by squid-consuming countries;

(C) U.S. export potential based on expected U.S. harvests, expected U.S.

consumption, relative prices, exchange rates, and foreign trade barriers;

(D) Increased or decreased revenues to the U.S. from foreign fishing fees;

(E) Increased or decreased revenues to U.S. harvesters (with or without joint ventures);

(F) Increased or decreased revenues to U.S. processors and exporters;

(G) Increases or decreases in U.S. harvesting productivity due to decrease or increase in foreign harvest;

(H) Increases or decreases in U.S. processing productivity; and

(I) Potential impact of increased or decreased TALFF on foreign purchases of U.S. products and services and U.S.-caught fish, changes in trade barriers, technology transfer, and other considerations.

(iii) The DAH, DAP and JVP must be based on data from sources specified in § 655.22(e) and other relevant data including past domestic landings, the capacity and intent of U.S. processors to process U.S.-harvested squid, and projected amounts of squid necessary for joint ventures during the fishing year.

(iv) IOY must be set at a level that will produce the greatest overall net benefit to the United States. In determining this amount, the Regional Director, in consultation with the Council, will provide for a TALFF of at least a minimum incidental catch in other directed fisheries. TALFF may be greater than an incidental catch level, if the IOY determined to produce the greatest overall benefit to the United States is sufficiently greater than DAH.

(A) *Loligo:* The incidental catch level is 1.0 percent of the allocated portion of the *Illex*, 0.04 percent of the allocated portion of the mackerel (if a directed fishery is allowed), and 0.5 percent of the allocated portions of the silver and red hake TALFFs.

(B) *Illex:* The incidental catch level is 10.0 percent of the allocated portion of the *Loligo* TALFF and 0.2 percent of the allocated portions of the silver and red hake TALFFs.

(v) The IOY may be adjusted by the Regional Director, in consultation with the Council, at any time during the fishing year, under § 655.22(f). The basis for any adjustment may be that new information or changed circumstances indicate that U.S. fishermen will exceed the initial DAH, or that the IOY should be increased to produce maximum net benefits to the United States based upon an application of the factors above. The IOY may be increased by the amount that DAH or TALFF, or both, are increased, but IOY may not exceed ABC. An adjustment to IOY may not result in TALFF being reduced to a quantity less than that allocated to and accepted by foreign nations or to a quantity less than the incidental catch levels specified in paragraph (b) of this section.

(2) *Atlantic mackerel.* For Atlantic mackerel the maximum OY may not exceed ABC. Mackerel amounts are derived using the following terms:

C = Estimated mackerel catch in Canadian waters for the upcoming fishing year.

US = Estimated U.S. mackerel catch for the upcoming year.

S = Mackerel spawning-stock size in the year after the upcoming fishing year.

Bycatch = 0.4 percent of allocated portions of the silver hake and red hake TALFFs and 1 percent of the allocated portions of the *Loligo* and 0.1 percent of the allocated portion of the *Illex* TALFFs.

ABC = Acceptable biological catch in U.S. waters for the upcoming fishing year.

T = Total catch in all waters (U.S. and Canadian) for the upcoming fishing year.

(i) ABC in U.S. waters for the upcoming fishing year is that quantity of mackerel that could be caught in U.S. and Canadian waters (T) minus the estimated catch in Canadian waters (C) and still maintain a spawning stock size (S) in the year following the year for which catch estimates and quotas are being prepared equal to or greater than 600,000 mt.

(A) IOY represents a modification of ABC, based on biological and economic factors, intended to provide the greatest overall benefit to the nation by incorporating all relevant factors.

(B) IOY will be specified so that the fishing mortality rate associated with T is less than or equal to F0.1. If the Council determines that development of the U.S. fishery requires a fishing mortality rate greater than F0.1, but still less than or equal to ABC, IOY may be set at the higher level. Such modification will be for that fishing year only and revert to F0.1 unless modified again in subsequent years.

(ii) The IOY is composed of an initial DAH and initial TALFF. The Regional Director projects the DAH by reviewing data concerning past domestic landings, projected amounts of mackerel necessary for domestic processing and for joint ventures during the fishing year, and other data pertinent for such a projection. The recreational fishery component of DAH is determined by the equation $Y=(0.01)(X)-(166)$ where Y is the predicted recreational catch and X is the mackerel spawning stock size in the upcoming fishing year, in metric tons. The JVP component of DAH is the portion of DAH which domestic processors either cannot or will not use. In addition, this specification of IOY is based on such criteria as contained in the Magnuson Act, specifically section 201(e), and the application of the following factors—

(A) Total world export potential by mackerel producing countries;

(B) Total world import demand by mackerel consuming countries;

(C) U.S. export potential based on expected U.S. harvests, expected U.S. consumption, relative prices, exchange rates, and foreign trade barriers;

(D) Increased/decreased revenues to the U.S. from foreign fees;

(E) Increased/decreased revenues to U.S. harvesters (with/without joint ventures);

(F) Increased/decreased revenues to U.S. processors and exporters;

(G) Increases/decreases in U.S. harvesting productivity due to decreases/increases in foreign harvest;

(H) Increases/decreases in U.S. processing productivity; and

(I) Potential impact of increased/decreased TALFF on foreign purchases of U.S. products and services and U.S. caught fish, changes in trade barriers, technology transfer, and other considerations.

(iii) The DAH, DAP, and JVP must be based on data from sources specified in § 655.22(e) and other relevant data including past domestic landings, the capacity and intent of U.S. processors to process U.S. harvested squid and projected amounts of squid necessary for joint ventures during the fishing year.

(iv) IOY must be set at a level that will produce the greatest overall net benefit to the United States. In determining this amount, the Regional Director, in consultation with the Council, will provide for a TALFF of at least a minimum incidental catch in other directed fisheries. TALFF may be greater than an incidental catch level, if the IOY determined to produce the greatest overall benefit to the U.S. is sufficiently greater than DAH. The incidental level is 0.4 percent of the allocated portion of the silver and red hake, 1.0 percent of the allocated portion of the *Loligo*, and 0.1 percent of the allocated portion of the *Illex* TALFFs.

(v) The IOY may be adjusted by the Regional Director, in consultation with the Council, at any time during the fishing year, under § 655.22(f). The basis for any adjustment may be that new information or changed circumstances indicate that U.S. fishermen will exceed the initial DAH, or that the IOY should be increased to produce maximum net benefits to the United States based upon an application of the factors above. The IOY may be increased by the amount that DAH or TALFF, or both, are increased, but IOY may not exceed ABC. An adjustment to IOY may not result in TALFF being reduced to a quantity less than that allocated to and accepted by foreign nations or to a quantity less than the incidental catch levels specified in paragraph (iv) of this system.

(3) *Butterfish.* (i) The Regional Director will review yearly the most recent biological data, including data on discards, pertaining to the stock. If the Regional Director determines that the stock cannot support a level of harvest equal to the maximum OY, he will establish a lower ABC for the fishing year. This level represents essentially the modification of MSY to reflect changed biological circumstances. If the stock is able to support a harvest level equivalent to the maximum OY, the ABC is set at that level.

(ii) From the ABC, the Regional Director, in consultation with the Council, will determine the IOY for the fishing year. The IOY represents a modification of ABC. The IOY is composed of an initial DAH and initial bycatch TALFF. The Regional Director will project the DAH by reviewing the data concerning past domestic landings, projected amounts of butterfish necessary for domestic processing and for joint ventures during the fishing year, and other data pertinent for such a projection. The JVP component of DAH is the portion of DAH which domestic processors either cannot or will not use.

(iii) In assessing the level of IOY, the Regional Director will provide for a bycatch TALFF equal to 3.0 percent of the allocated portion of the *Loligo* TALFF and 0.5 percent of the allocated portion of the *Illex*, 0.08 percent of the allocated portion of the Atlantic mackerel, and 0.1 percent of the allocated portion of the silver and red hake TALFFs.

(iv) The IOY may be adjusted by the Regional Director, in consultation with the Council, upward to the ABC at any time during the fishing year. An adjustment may be made to IOY to accommodate DAH needs. However, TALFF may not be adjusted to a quantity less than that needed for bycatch. Any adjustments to the IOY will be published in the FEDERAL REGISTER and may provide for a public comment period.

(c) *Allowable domestic harvest.* Fish taken within State jurisdiction will be counted against the domestic harvests specified under this section. The allowable domestic harvest for each species is the OY (including OY as increased under paragraph (b)(1)(v) of this section) minus TALFF.

[48 FR 14556, Apr. 4, 1983, as amended at 49 FR 406, Jan. 4, 1984; 49 FR 9571, Mar. 14, 1984; 51 FR 10551, Mar. 27, 1986]

§ 655.22 Procedures for determining initial annual amounts and adjustments.

(a) On or about October 15 of each year, the Council will prepare and submit recommendations to the Regional Director of the initial annual amounts for the fishing year beginning January 1, based on information gathered from sources specified in paragraph (e) of this section.

(b) On or about November 1 of each year, the Secretary will publish a notice in the FEDERAL REGISTER that specifies preliminary initial amounts of OY, DAH, DAP, JVP, TALFF, and reserve (if any) for each species. The amounts will be based on information submitted by the Council and from the sources specified in paragraph (e) of this section; in the absence of a Council report, the amounts will be based on information gathered from sources specified in paragraph (e) of this section and other information considered appropriate by the Regional Director. The FEDERAL REGISTER notice will provide for a 30-day comment period.

(c) The Council's recommendation and the information listed in paragraph (e) of this section will be available in aggregate form for inspection at the office of the Regional Director during the public comment period.

(d) On or about December 15 of each year, the Secretary will make a final determination of the initial amounts for each species, considering all relevant data and any public comments, and will publish a notice of the final determination and response to public comments in the FEDERAL REGISTER.

(e) Sources used to establish initial annual specifications include:

(1) Results of a survey of domestic processors and joint venture operators of estimated processing capacity and intent to use that capacity (approved by the Office of Management and Budget under OMB control number 0648-0114);

(2) Results of a survey of fishermen's trade associations of estimated fish harvesting capacity and intent to use that capacity;

(3) Landings and catch statistics;

(4) Stock assessments; and

(5) Relevant scientific information.

(f) Any adjustments to the IOY for squid must be published in the FEDERAL REGISTER with the reasons for such adjustment. Any notice of adjustment may provide for a public comment period.

[48 FR 14556, Apr. 4, 1983, as amended at 49 FR 407, Jan. 4, 1984; 51 FR 10552, Mar. 27, 1986]

§ 655.23 Closure of the fishery.

(a) *General.* The Secretary shall close any domestic fishery in the EEZ for any species when U.S. fishermen have harvested 80 percent of the allowable domestic harvest (see § 655.21(c)), if such closure is necessary to prevent the allowable domestic harvest from being exceeded. The closure will be in effect for the remainder of the fishing year.

(b) *Notice.* If the Secretary determines that a closure is necessary, he will:

(1) Notify in advance the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Councils;

(2) Mail notifications of the closure to all holders of permits issued under § 655.5 at least 72 hours before the effective date of the closure;

(3) Provide for adequate notice of the closure to recreational fishermen in the fishery; and

(4) Publish a notice of closure in the FEDERAL REGISTER.

(c) *Incidental catches.* During a period of closure, the trip limit for the species for which the fishery is closed is 10 percent by weight of the total amount of fish on board.

[48 FR 14556, Apr. 4, 1983, as amended at 48 FR 44839, Sept. 30, 1983. Redesignated at 51 FR 10552, Mar 27, 1986, and amended at 53 FR 24660, June 29, 1988]

PART 657—ATLANTIC SALMON FISHERY

Subpart A—General Provisions

Sec.

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Subpart B—Management Measures

657.20 Prohibition on possession.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 657.1 Purpose and scope.

This part implements the Fishery Management Plan for Atlantic Salmon prepared by the New England Fishery Management Council in consultation with the U.S. Fish and Wildlife Service of the U.S. Department of the Interior. These regulations govern the conservation and management of Atlantic salmon.

[53 FR 4983, Feb. 19, 1988]

§ 657.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Atlantic salmon means *Salmo salar.*

Land means to begin offloading fish, to offload fish, to enter a port with fish, or to transfer fish to another vessel.

Recreational fishing means fishing for finfish which does not result in their barter, trade, or sale.

Recreational fishing vessel means any vessel from which no fishing other than recreational fishing is conducted. Party and charter boats are not considered recreational fishing vessels.

Regional Director means the Regional Director, Northeast Region, NMFS, 14 Elm Street, Federal Building, Gloucester, MA 01930, or a designee.

Retain aboard means to fail to return fish to the sea after a reasonable opportunity to sort the catch.

[53 FR 4983, Feb. 19, 1988, as amended at 53 FR 24655, June 29, 1988]

§ 657.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) Nothing in these regulations will supersede more restrictive State or local management measures for Atlantic salmon.

[53 FR 4983, Feb. 19, 1988, as amended at 53 FR 24655, June 29, 1988]

§ 657.4 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Use any vessel of the United States for taking, catching, harvesting, fishing for, or landing any Atlantic salmon taken from the EEZ.

(b) Transfer directly or indirectly, or attempt to transfer, to any vessel any Atlantic salmon taken from the EEZ.

(c) Make any false statement, oral or written, to an authorized officer, concerning the taking, catching, harvest, landing, purchase, sale, possession, or transfer of any Atlantic salmon.

(d) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search by an authorized officer while enforcing this part.

[53 FR 4983, Feb. 19, 1988, as amended at 53 FR 24658, June 29, 1988]

§ 657.5 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 657.6 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

Subpart B—Management Measures

§ 657.20 Prohibition on possession.

(a) *Incidental catch.* All Atlantic salmon caught incidental to a directed fishery for other species in the EEZ must be released in such a manner as to insure maximum probability of survival.

(b) *Presumption.* The possession of Atlantic salmon will be *prima facie* evidence that such Atlantic salmon were taken in violation of these regulations. Evidence that such fish were harvested in State waters, or from foreign waters, or from aquaculture enterprises, will be sufficient to rebut the presumption. This presumption does not apply to fish being sorted on deck.

[53 FR 4983, Feb. 19, 1988]

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO

Subpart A—General Measures

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658.2 Definitions.
658.3 Relation to other laws.
658.4 Vessel permits and fees.
658.5 Recordkeeping and reporting.
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Subpart B—Management Measures

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AUTHORITY: 16 U.S.C. 1801 *et seq.*

Subpart A—General Measures

§ 658.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, developed by the Gulf of Mexico Fishery Management Council under the Magnuson Fishery Conservation and Management Act.

(b) The regulations in this part govern fishing for brown shrimp, white shrimp, pink shrimp, royal red shrimp, seabob shrimp, and rock shrimp by vessels of the United States within that portion of the Gulf of Mexico over which the United States exercises exclusive fishery management authority.

(c) Regulations governing foreign fishing for royal red shrimp appear in 50 CFR Part 611.

(d) Regulations governing the taking of endangered and threatened marine mammals and sea turtles appear in 50 CFR Parts 222 and 227.

[46 FR 27494, May 20, 1981, as amended at 52 FR 19148, May 21, 1987]

§ 658.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Committee means the Pasco, Hernando, and Citrus Counties Shrimping and Crabbing Advisory Committee.

Council means the Gulf of Mexico Fishery Management Council, Suite

881, 5401 West Kennedy Boulevard, Tampa, Florida 33609.

Endangered and threatened marine mammals and sea turtles means five whale species (sperm, fin, sei, humpback, and right) and five sea turtle species (Kemp's ridley, loggerhead, green, hawksbill, and leatherback).

FDNR means the Florida Department of Natural Resources.

Fishery management plan (FMP) means the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico.

FMFC means the Florida Marine Fisheries Commission.

Gulf of Mexico means the geographic area of authority of the Gulf of Mexico Fishery Management Council.

Regional Director means the Regional Director, Southeast Region, National Marine Fisheries Service, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702, or a designee.

Science and Research Director means the Science and Research Director, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, telephone 305-361-5761, or a designee.

Shrimp means the following species:

Brown shrimp, *Penaeus aztecus*
White shrimp, *P. setiferus*
Pink shrimp, *P. duorarum*
Seabob shrimp, *Xiphopeneus kroyeri*
Rock shrimp, *Sicyonia brevirostris*
Royal red shrimp, *Hymenopenaeus robustus*

Statistical area means one or more of the 21 statistical grids depicted in Figure 5. In addition, the term includes the following "inside" water areas:

"Inside" water area	Code No.
Charlotte Harbor, FL	4.1
Tampa Bay, FL	5.1
Apalachicola Bay, FL	7.1
St. Andrews Bay, FL	8.1
St. Joseph Bay, FL	8.2
Choctawatchee Bay, FL	9.1
Pensacola Bay, FL	10.1
Alabama Inside Waters (Exclusive of Mississippi Sound), AL	10.2
Little Lagoon, AL	10.5
Mississippi Sound, MS	11.1
Lakes Borgne and Pontchartrain, LA	12.1
Breton and Chandeleur Sounds and Adjacent Marsh Areas, LA	12.2
Inside Waters from Mississippi River to Bayou Lafourche, LA	13.1
Inside Waters from Bayou Lafourche to Atchafalaya River, LA	14.1
Inside Waters from Atchafalaya River to Tigre Point, LA	15.1
Inside Waters from Tigre Point to Louisiana Point, LA	16.1
Sabine Lake, TX	17.2
Galveston Bay System, TX	18.1
Matagorda Bay System, TX	19.1
San Antonio Bay System, TX	19.2
Arkansas Bay System, TX	19.3
Corpus Christi Bay System, TX	20.1
Upper Laguna Madre, TX	20.2
Lower Laguna Madre, TX	21.1

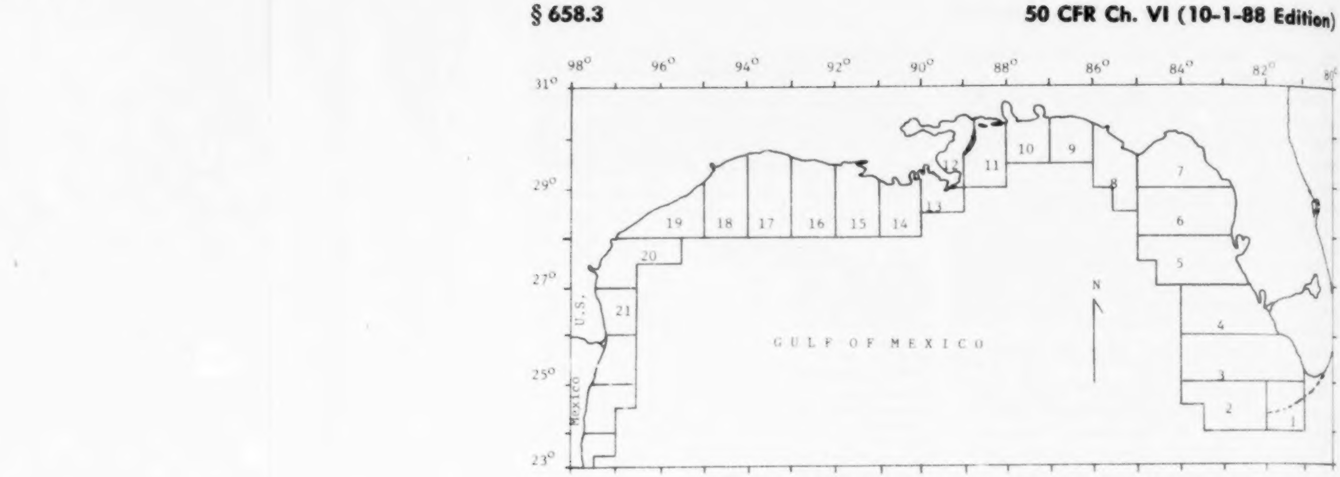

Figure 5. Statistical Grids for Reporting Harvest of Shrimp
For Illustrative Purposes Only - Not to Scale

United States harvested shrimp means shrimp caught, taken, or harvested by vessels of the United States in the Gulf of Mexico, whether or not such shrimp is landed in the United States.

[46 FR 27494, May 20, 1981, as amended at 48 FR 17099, Apr. 21, 1983; 49 FR 18495, May 1, 1984; 49 FR 30717, Aug. 1, 1984; 52 FR 19148, 19149, May 21, 1987; 53 FR 24655, June 29, 1988; 53 FR 38294, Sept. 30, 1988]

§ 658.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) The regulations found in this part are intended to be compatible with regulations pertaining to the Everglades National Park in the State of Florida and Fort Jefferson National Monument. These regulations which prohibit commercial shrimping are found at 36 CFR 7.45 and 36 CFR 7.27, respectively.

[46 FR 27494, May 20, 1981, as amended at 53 FR 24655, June 29, 1988]

§ 658.4 Vessel permits and fees.

No permit is required for vessels of the United States fishing for shrimp under this part.

[46 FR 27494, May 20, 1981]

§ 658.5 Recordkeeping and reporting.

(a) *Vessel owners and operators.* The owner or operator of any fishing vessel that fishes for, or lands, shrimp or any part thereof in the Gulf of Mexico or in adjoining State waters, and who is selected to report by the Science and Research Director, must provide upon request the following information regarding any fishing trip to the Science and Research Director:

(1) Name and official number of vessel;

(2) Amount of catch of shrimp by species;

(3) The condition of the shrimp (heads on/heads off);

(4) Depth fished and information regarding fishing location that is specific enough to enable the Science and Research Director to ascertain the statistical area fished;

(5) Person to whom sold, bartered or traded;

(6) Number, size and type of gear; and

(7) Effort and period of fishing.

(b) *Dealers and processors.* Any person who receives shrimp or parts thereof by way of purchase, barter, trade or sale from a fishing vessel or person that fishes for, or lands, shrimp or parts thereof in the Gulf of Mexico or in adjoining State waters, and who is selected to report by the Science and Research Director, must provide upon request the following information to the Science and Research Director:

(1) Fishing vessel (name and official number) or person (if harvested from other than a vessel) from which received;

(2) Amount of shrimp or parts thereof received by species and size category for each vessel trip; and

(3) Exvessel value by size category of shrimp or portions thereof received.

[49 FR 18496, May 1, 1984, as amended at 53 FR 24656, June 29, 1988; 53 FR 38294, Sept. 30, 1988]

§ 658.6 Vessel identification.

(a) *Offical number.* Each vessel of the United States engaged in the shrimp fishery in the Gulf of Mexico EEZ must:

(1) Display its official number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The official number is the documentation number issued by the Coast Guard for documented vessels or the registration number issued by a State or the Coast Guard for undocumented vessels.

(2) The official number must be in block arabic numerals in contrasting color to the background.

(3) The official number must be at least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels.

(4) The official number must be permanently affixed to or painted on the vessel.

(b) *Duties of operator.* The operator of each fishing vessel must:

(1) Keep the registration number clearly legible and in good repair, and

(2) Insure that no part of the fishing vessel, its rigging, or its fishing gear obstructs the view of the official number from any enforcement vessel or aircraft.

[46 FR 27494, May 20, 1981, as amended at 52 FR 19148, May 21, 1987]

§ 658.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Falsify or fail to report information required to be submitted upon request by § 658.5.

(b) Trawl in a closed area or during a closed season within the EEZ, except as allowed under § 658.24(a).

(c) Falsify or fail to affix and maintain vessel markings as required by § 658.6.

(d) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search in the process of enforcing this part.

[46 FR 27494, May 20, 1981, as amended at 49 FR 18496, May 1, 1984; 52 FR 19148, 19149, May 21, 1987; 53 FR 24658, June 29, 1983]

§ 658.8 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 658.9 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

Subpart B—Management Measures

§ 658.20 Fishing year.

The fishing year for all species of shrimp, except royal red shrimp, begins on May 1 and ends on April 30. The fishing year for royal red shrimp begins on January 1 and ends on December 31.

[46 FR 27494, May 20, 1981]

§ 658.21 Allowable levels of harvest.

(a) *Catch quotas.* The domestic quota for royal red shrimp is 111.6 metric tons. There is no domestic quota for other species of shrimp.

(b) *Territorial waters.* These regulations do not limit the harvest of shrimp resources in waters landward of the EEZ. However, harvest from these waters will be taken into account in the calculation of the maximum sustainable yield and optimum yield from the fishery.

(c) *Closure.* When the domestic quota for royal red shrimp is reached, the Regional Director shall close the fishery by publishing a notice in the FEDERAL REGISTER.

[46 FR 27494, May 20, 1981, as amended at 52 FR 19148, May 21, 1987]

§ 658.22 Tortugas shrimp sanctuary.

The area commonly known as the "Tortugas Shrimp Sanctuary," off the State of Florida, is closed to all trawl fishing. The area is that part of the EEZ shoreward of a line connecting the following points (see Figure 1):

Point	Latitude	Longitude	Common name
N	25°52.9'N	81°37.95'W	Coon Key Light
F	24°50.7'N	81°51.3'W	
G	24°40.1'N	82°26.7'W	New Grounds Shoals Light
H	24°34.7'N	82°35.1'W	Rebecca Shoals Light
P	24°35'N	82°08'W	Marquessas Keys

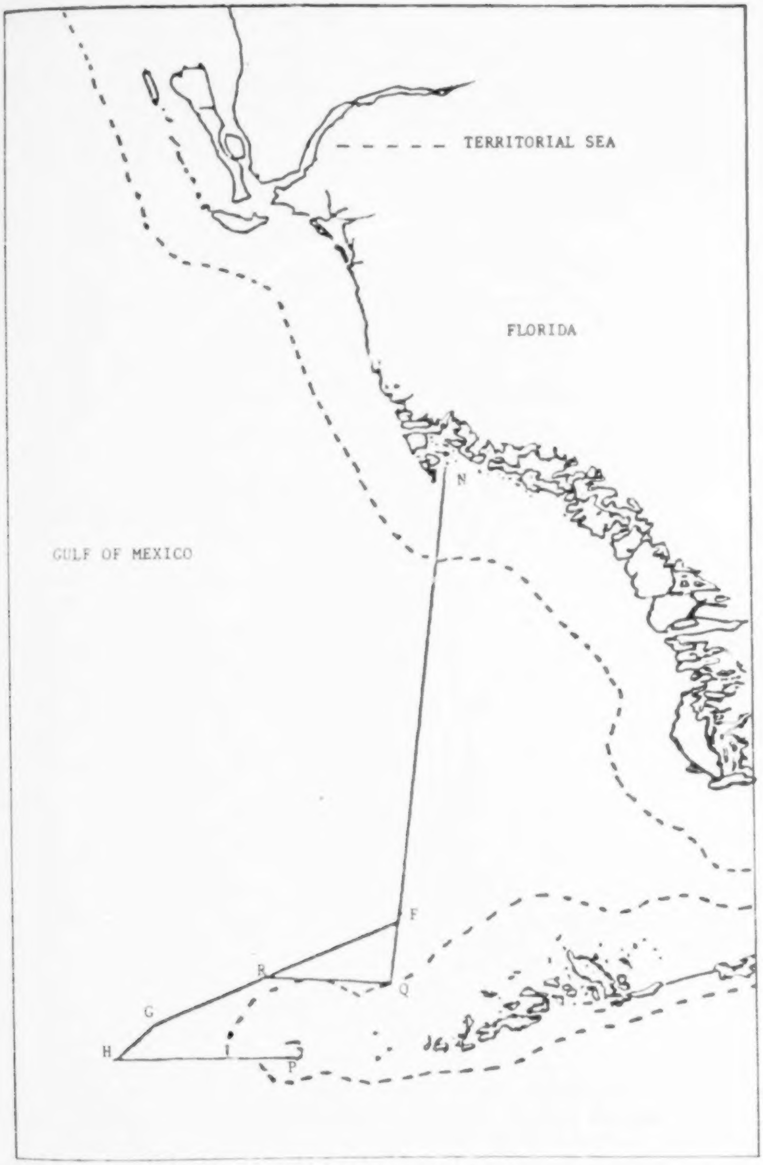
TERRITORIAL SEA
FLORIDA
GULF OF MEXICO
N
F
R
Q
G
H
I
J
P

FIGURE 1. LOCATION OF TORTUGAS SHRIMP SANCTUARY.

[46 FR 27494, May 20, 1981, as amended at 50 FR 37199, Sept. 12, 1985; 52 FR 19148, May 21, 1987]

§ 658.23 Stone crab area restrictions.

(a) Between January 1 and one hour after sunset (local time) May 20, the area described in this paragraph is closed to trawl gear, including live bait gear. The area is that part of the EEZ shoreward of a line connecting the following points (see Figure 2):

Point	Latitude	Longitude	Common name
B	26°16′N	81°58.5′W	
C	26°00′N	82°04′W	
D	25°09′N	81°47.6′W	
E	24°54.5′N	81°50.5′W	
M	24°41.9′N	81°40.5′W	Snipe Point

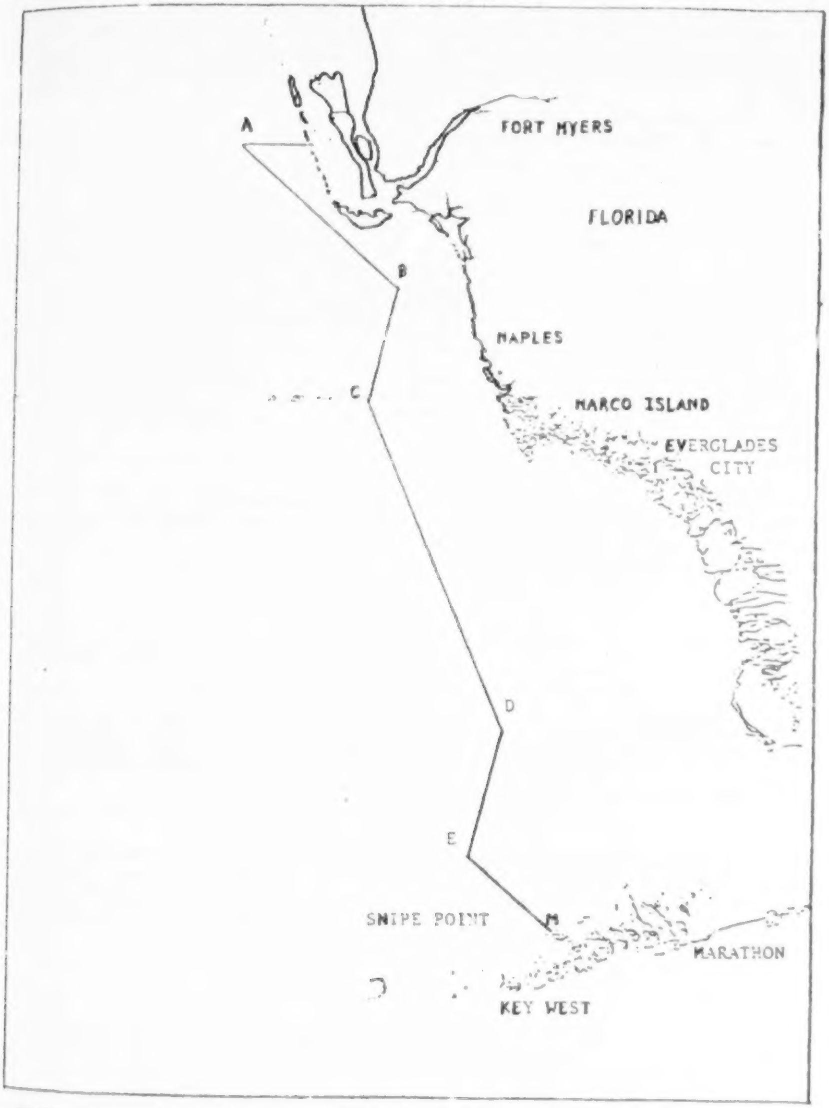
A
FORT MYERS
FLORIDA
B
NAPLES
C
MARCO ISLAND
EVERGLADES CITY
D
E
SNIPE POINT
F
MARATHON
KEY WEST

FIGURE 2. AREA CLOSED TO SHRIMPING BETWEEN JANUARY 1 AND MAY 20.

(b)(1)(i) Between 0001 hours October 5 to 2400 hours May 20 each year, it is unlawful to fish for shrimp in the following two areas of the EEZ (see Figure 4):

(A) That part of the EEZ identified as Zone I and bounded by a continuous line connecting points expressed by latitude and longitude (LORAN notations are unofficial and are included only for the convenience of the fishermen):

ZONE 1

Point	Latitude	Longitude	Loran chain 7980		
			X	Y	Z
X	28°55'20" N	83°00'06" W	31365.0	45342.8	63000.0
C	28°26'01" N	82°59'45" W	31206.7	45103.6	63000.0
D	28°26'01" N	82°56'47" W	31213.2	45080.0	62980.6
T	28°27'43" N	82°55'07" W	31226.2	45080.0	62970.0
E	28°41'39" N	82°55'18" W	31301.0	45193.1	62970.0
F	28°41'39" N	82°56'06" W	31299.2	45199.1	62975.0
G	28°48'55" N	82°56'19" W	31337.8	45260.0	62975.0
W	29°49'25" N	82°55'49" W	31341.2	45260.0	62971.2

Thence northerly along the State boundary to point X.

(B) That part of the EEZ identified as Zone III and bounded by a continuous line connecting points expressed by latitude and longitude (LORAN notations are unofficial and are included only for the convenience of the fishermen):

ZONE III

Point	Latitude	Longitude	Loran chain 7980		
			X	Y	Z
Z	28° 37' 44" N	82° 53' 02" W	31284.3	45143.0	62955.0
S	28° 30' 51" N	82° 52' 54" W	31247.6	45086.8	62955.0
U	28° 30' 51" N	82° 52' 02" W	31249.5	45080.0	62949.5
Y	28° 31' 28" N	82° 51' 28" W	31253.9	45080.0	62945.4

Thence northerly along the State boundary to point Z.

(ii) It is unlawful to fish for shrimp in that part of the EEZ identified as Zone IV (see Figure 4) during the period 0001 hours December 2 to 2400 hours April 1. Zone IV is bounded by a continuous line connecting points expressed in latitude and longitude (LORAN notations are unofficial and are included only for the convenience of the fishermen):

ZONE IV

Point	Latitude	Longitude	Loran chain 7980		
			X	Y	Z
V	28°41'39" N	82°54'08" W	31303.0	45183.1	62961.5
E	28°41'39" N	82°55'18" W	31301.0	45193.1	62970.0
O	28°30'51" N	82°55'06" W	31242.7	45104.3	62970.0
S	28°30'51" N	82°52'54" W	31247.6	45086.8	62955.0
Z	28°37'44" N	82°53'02" W	31284.3	45143.0	62955.0

Thence, northerly along the State boundary to point V.

(iii) It is unlawful to fish for shrimp in that part of the EEZ identified as Zone V (see Figure 4) during the period 0001 hours December 1 to 2400 hours March 15. Zone V is bounded by a continuous line connecting points expressed as latitude and longitude (LORAN notations are unofficial and are included for the convenience of the fishermen):

ZONE V

Point	Latitude	Longitude	Loran chain 7980		
			X	Y	Z
W	28°49'25" N	82°55'49" W	31341.2	45260.0	62971.2
G	28°48'55" N	82°56'19" W	31337.8	45260.0	62975.0
F	28°41'39" N	82°56'06" W	31299.2	45199.1	62975.0
V	28°41'39" N	82°54'08" W	31303.0	45183.1	62961.5

Thence, northerly along the State boundaries to point W

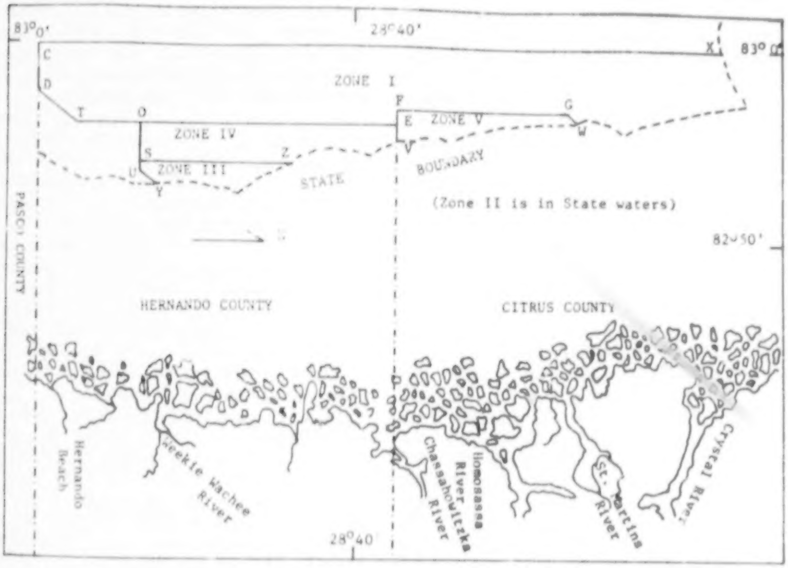
83°0'
28°40'
83°0'
X
C
D
ZONE I
F
G
T
O
E
ZONE V
W
ZONE IV
S
Z
V
BOUNDARY
U
ZONE III
STATE
Y
(Zone II is in State waters)
PASCO COUNTY
82°50'
HERNANDO COUNTY
CITRUS COUNTY
Hernando Beach
Weekie Wachee River
Chassahowitzka River
Homosassa River
St. Martins River
Crystal River
28°40'

Figure 4 Chart delineating areas closed to fishing for shrimp or stone crabs (not to scale, for illustrative purposes only).

(2) No person may place into the management area any article, including fishing gear, with the intent to interfere with fishing or obstruct or damage fishing gear or fishing vessels of others; or to utilize willfully fishing gear in such a fashion that it obstructs or damages the fishing gear or fishing vessel of another.

[46 FR 27494, May 20, 1981, as amended at 49 FR 30717, Aug 1, 1984; 49 FR 39163, Oct. 4, 1984; 50 FR 25714, June 21, 1984; 52 FR 19148, 19149, May 21, 1987]

§ 658.24 Zone modification procedures.

(a) *Procedure for modifying existing restricted fishing areas for shrimp fishermen in the EEZ* (inshore of 83.0° W. longitude) *off Pasco, Hernando, and Citrus Counties, Florida, by notice.*

(1) The Pasco, Hernando, and Citrus Counties Shrimping and Crabbing Advisory Committee (Committee) may propose modification to the exclusive fishing areas for shrimping and for crabbing provided by § 658.23 to resolve any conflict in both State waters and the EEZ inshore of 83.0° W. longitude, at its public meetings. Such a zoning proposal for fishing areas may be initiated at anytime by the Committee in response to changing conditions in the fishery and may include zoning configurations that fluctuate or change on specific dates to allow for optimum production by the user groups affected.

(2) The Committee will submit the zoning proposal to the State regulatory agencies, Florida Department of Natural Resources (FDNR) and Florida Marine Fisheries Commission (FMFC), for implementation in State waters and may submit the proposal to the Council for initial review and comment.

(3) After the State has accepted the proposal for promulgation as a rule, the State may request that the Council adopt that portion of the zoning proposal relating to the EEZ. The Council will review the proposal and administrative record developed by the State in support of its proposed rule and will recommend to the Regional Director that the proposal be implemented (or not implemented) or implemented with minor modifications in EEZ. If the Council or Regional Director determine that the opportunity for public comment through the State system was inadequate, they may hold public hearings on the zoning proposal affecting the EEZ. The Council may also avail itself of the advice and counsel of its Scientific and Statistical Committee, its Shrimp and Stone Crab Advisory Panels, or an Ad Hoc Advisory Panel consisting of persons fishing the Federal waters, in the review of the proposal or to propose zoning modifications. Should the Council recommend that the Federal portion of the proposal not be implemented or be modified, it will immediately notify the State and specify its reasons for such action.

(4) If the Secretary, after receiving the recommendations of the Council, concludes that such recommendations are consistent with the objections of the FMPs, the Magnuson Act, other applicable law, the Secretary will implement them by notice in the FEDERAL REGISTER. If the Regional Director determines that the recommended action of the Council should not be implemented, the Regional Director will immediately notify the Council and State of his reasons and may suggest an alternative to the recommended action. The Council, after conferring with the State, will immediately advise the Regional Director as to the acceptability of the alternative.

(5) In the event that the Committee fails to act or is unable to develop a compromise solution for fishing the area, or if the Committee is abolished or otherwise becomes nonfunctional, the Council will call upon the FMFC to provide the recommendations under paragraphs (a)(1) and (2) of this section. The Council may then utilize its own Ad Hoc Advisory Panel consisting of fishermen from the area affected to advise the Council on the acceptability of these recommendations or to propose zoning modifications.

(6) If the Committee is enlarged or restructured to have authority over zoning for other counties, the restructured committee may provide recommendations under paragraphs (a) (1) and (2) of this section and the Secretary may implement such recommendations under paragraph (a) (4) of this section.

(7)(i) The Secretary may, with the concurrence of the Council, modify existing zoning by publishing a notice in the FEDERAL REGISTER if the Regional Director determines that the procedures in paragraphs (a)(1) through (5) of this section cannot be followed in time to prevent inequitable access to the resources.

(ii) The Secretary will invite public comment prior to the effective date of the notice. If the Secretary determines, for good cause, that a notice must be promulgated immediately, comments will be received for 15 days after the effective date of the notice.

(iii) As soon as practicable after the end of the comment period, the Secretary will either rescind modify or allow the modification to the existing zoning to remain unchanged through notice in the FEDERAL REGISTER.

(8)(i) In the event that the Regional Director determines that the procedural paragraphs (a)(1) through (5) of this section cannot be followed in time to resolve or prevent serious conflict, the Secretary may, with the concurrence of the Council, publish a notice in the FEDERAL REGISTER to

(A) Close the area or portion thereof to shrimp fishing for a period not to exceed 30 days; and/or

(B) Modify the configuration of the existing boundaries of the fishing areas as specified in the rule in the EEZ for part of or for the duration of the stone crab season and close the fisheries in the areas affected for 10 days to allow stone crab traps to be moved. Provide such buffer zones where no fishing is allowed, as are deemed necessary.

(ii) Not later than 72 hours after the effective date of the modification to the regulation under paragraph (b)(1) of this section, the Regional Director will conduct a public fact-finding hearing. Notice of such hearing will be provided to the following:

(A) The Chairman of the Council or his designee;

(B) The Director of the FDNR or his designee;

(C) The Chairman of the FMFC or his designee;

(D) Local news media as may be appropriate;

(E) Such user group representatives or organizations as may be appropriate and practicable; and

(F) Others deemed appropriate by the Regional Director.

(iii) The fact-finding hearing will be for the purpose of evaluating the following:

(A) The existence and seriousness of the conflict needing resolution by the modification to the existing rule;

(B) The appropriate duration of the modification to the existing rule;

(C) Other solutions to the conflict; and

(D) Other relevant matters.

(iv) The Secretary, within ten days after conclusion of the factfinding hearing will either rescind, modify or allow the modification to the existing rule to remain unchanged through notice in the FEDERAL REGISTER.

(b) The Secretary, in consultation with or based on recommendations by the Council, may by regulatory amendment take such action as may be necessary and appropriate to resolve any conflict in the area off Pasco, Hernando and Citrus Counties, Florida (inshore of 83.0′ W. longitude) or any other part of the EEZ, provided such action is taken in a manner which to the maximum extent practicable is consistent with action recommended by or taken by the adjacent coastal State.

(c) Nothing contained in the section limits the authority of the Secretary to issue emergency regulations under section 305(e) of the Magnuson Act.

[49 FR 30718, Aug. 1, 1984, as amended at 52 FR 19148, May 21, 1987]

§ 658.25 Texas closure.

(a) *Area and season restrictions.* Between June 1 and July 15, the area described in this paragraph is closed to all trawl fishing, except that a vessel may fish for royal red shrimp beyond the 100-fathom depth contour. The area is that part of the EEZ off the State of Texas west of a line connecting point A (29°32.1′N. lat., 93°47.7′W. long.) to point B (26°11.4′N. lat., 92°53′W. long.) (see Figure 3).

(b) *Adjustment of dates.* The Regional Director may adjust the closing or opening date by as much as 15 days, to provide an earlier, later, or longer closure; but the duration of the closure may not exceed 60 days, nor be less than 45 days.

(1) The Regional Director must base an adjustment of the closing or opening date on the following criteria:

(i) Biological data collected by the Texas Parks and Wildlife Department (TPWD) and used to predict when brown shrimp in the central and northern bays of Texas will reach a total length of 80 to 90 mm; and

(ii) The strength of outgoing tides at the time predicted under paragraph (b)(1)(i) of this section; and

(iii) Other ecological data relevant to the timing or duration of the closure.

(2) The Regional Director, after consulting with the TPWD, may adjust the closing or opening date by issuing a notice in the FEDERAL REGISTER. The notice will specify the adjusted date and the reasons for the adjustment.

(3) A notice in the FEDERAL REGISTER advancing the closing date or delaying the opening date must be available to the public for 72 hours before its effective date. A notice in the FEDERAL REGISTER delaying the closing date or advancing the opening date must be available to the public for 24 hours before its effective date.

(4) A notice in the FEDERAL REGISTER may be made available to the public by any of the following methods:

(i) Procedures customarily used by the TPWD for posting and publicizing similar notices of opening or closure;

(ii) Publication of a notice in a newspaper of major circulation in each of the following cities: Brownsville, TX Aransas Pass, TX; Galveston, TX Corpus Christi, TX; Freeport, TX Port Arthur, TX; Cameron, LA; and Morgan City, LA;

(iii) Notification of shrimp fishery organizations in all the States bordering the Gulf of Mexico;

(iv) Broadcast of a notice at time intervals, channels, and frequencies customarily used by the TPWD to broadcast similar notices of opening or closure.

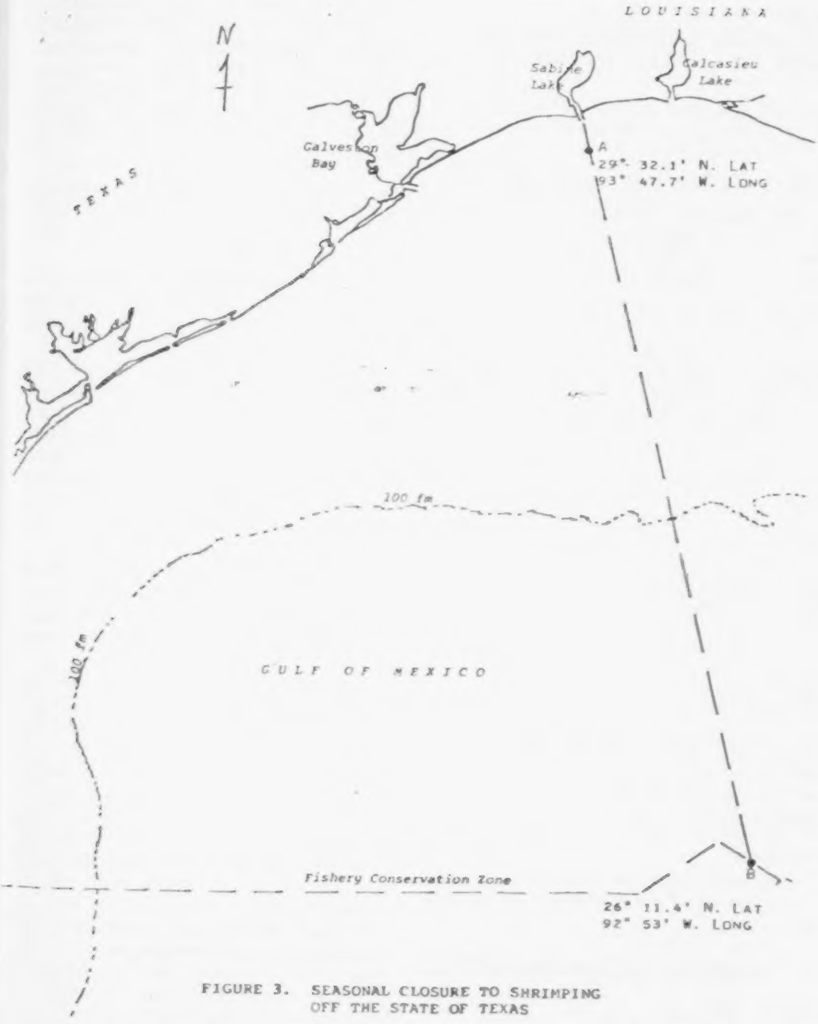
LOUISIANA
N
Sabine Lake
Calcasieu Lake
Galveston Bay
TEXAS
A
29° 32.1' N. LAT
93° 47.7' W. LONG
100 fm
100 fm
GULF OF MEXICO
Fishery Conservation Zone
B
26° 11.4' N. LAT
92° 53' W. LONG

FIGURE 3. SEASONAL CLOSURE TO SHRIMPING OFF THE STATE OF TEXAS

[46 FR 27494, May 20, 1981. Redesignated at 49 FR 30718, Aug. 1, 1984, and amended at 50 FR 37199, Sept. 12, 1985; 52 FR 19148, May 21, 1987]

§ 658.26 Size restrictions.

There are no minimum size requirements for shrimp harvested in the EEZ.

[46 FR 27494, May 20, 1981. Redesignated at 49 FR 30718, Aug. 1, 1984, and amended at 52 FR 19148, May 21, 1987]

§ 658.27 Specifically authorized activities.

The Regional Director may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

[46 FR 27494, May 20, 1981. Redesignated at 49 FR 30718, Aug. 1, 1984]

PART 661—OCEAN SALMON FISHERIES OFF THE COASTS OF WASHINGTON, OREGON, AND CALIFORNIA

Subpart A—General Measures

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Authority: 16 U.S.C. 1801 *et seq.*

Source: 49 FR 43682, Oct. 31, 1984, unless otherwise noted.

Subpart A—General Measures

§ 661.1 Purpose.

The purpose of this part is to provide for management of salmon and steelhead fisheries off the coasts of Washington, Oregon, and California in the EEZ over which the United States exercises exclusive fishery management authority (i.e., the Pacific Fishery Management Council's Salmon Fishery Management Area) under the Magnuson Act.

[52 FR 49020, Dec. 29, 1987, as amended at 53 FR 24658, June 29, 1988]

§ 661.2 Definitions.

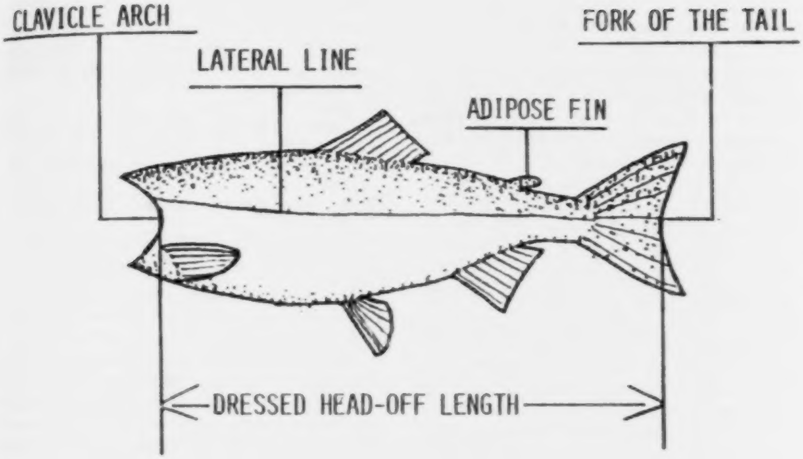
In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Barbless hook means a hook with a single shank and point, with no secondary point or barb curving or projecting in any other direction. Where *barbless hooks* are specified, hooks manufactured with barbs can be made "barbless" by forcing the point of the barb flat against the main part of the point.

Commercial fishing means fishing with troll fishing gear as defined annually under § 661.23, or fishing for the purpose of sale or barter of the catch.

Council means the Pacific Fishery Management Council, Metro Center, Suite 420, 2000 S.W. First Avenue, Portland, OR 97201-5344.

Dressed, head-off length of salmon means the shortest distance between the midpoint of the clavicle arch (see illustration) and the fork of the tail, measured along the lateral line while the fish is lying on its side, without resort to any force or mutilation of the fish other than removal of the head, gills, and entrails.



Dressed, head-off salmon means salmon that have been beheaded, gilled, and gutted without further separation of vertebrae, and are either being prepared for on-board freezing, or are frozen and will remain frozen until landed.

Fishery management area means the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 miles offshore, bounded on the north by the Provisional International Boundary between the United States and Canada and bounded on the south by the International Boundary between the United States and Mexico. The inner boundary of the EEZ is a line coterminous with the seaward boundaries of the States of Washington, Oregon, and California (the "3-mile limit"). The outer boundary of the EEZ is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the United States and Canada or Mexico. The northeastern, northern, and northwestern boundaries of the fishery management area are as follows:

(a) Northeastern boundary—that part of a line connecting the light on Tatoosh Island, Washington, with the light on Bonilla Point on Vancouver Island, British Columbia, southerly of the International Boundary between the United States and Canada (at 48°29'37" N. latitude, 124°43'33" W. longitude), and northerly of the point where that line intersects with the boundary of the U.S. territorial sea.

(b) Northern and northwestern boundary is a line [1] connecting the following coordinates:

48°29'37.19" N. lat.,	124°43'33.19" W. long.;
48°30'11" N. lat.,	124°47'13" W. long.;
48°30'22" N. lat.,	124°50'21" W. long.;
48°30'14" N. lat.,	124°52'52" W. long.;
48°29'57" N. lat.,	124°59'14" W. long.;
48°29'44" N. lat.,	125°00'06" W. long.;
48°28'09" N. lat.,	125°05'47" W. long.;
48°27'10" N. lat.,	125°08'25" W. long.;
48°26'47" N. lat.,	125°09'12" W. long.;
48°20'16" N. lat.,	125°22'48" W. long.;
48°18'22" N. lat.,	125°29'58" W. long.;
48°11'05" N. lat.,	125°53'48" W. long.;
47°49'15" N. lat.,	126°40'57" W. long.;
47°36'47" N. lat.,	127°11'58" W. long.;

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[1] The line joining these coordinates is the provisional international boundary of the U.S. EEZ as shown on NOAA/NOS Charts #18480 and #18002.

47°22′00″ N. lat., 127°41′23″ W. long.;
46°42′05″ N. lat., 128°51′56″ W. long.;
46°31′47″ N. lat., 129°07′39″ W. long.

(c) The southern boundary of the fishery management area is the United States-Mexico International Boundary, which is a line connecting the following coordinates:

32°35′22″ N. lat., 117°27′49″ W. long.;
32°37′37″ N. lat., 117°49′31″ W. long.;
31°07′58″ N. lat., 118°36′18″ W. long.;
30°32′31″ N. lat., 121°51′58″ W. long.

(d) The inner boundaries of the fishery management area are subject to change if the Secretary assumes responsibility for the regulation of the salmon fishery within State waters under section 306(b) of the Magnuson Act, defined below.

Freezer trolling vessel means a fishing vessel, equipped with troll fishing gear, which has a present capability for (a) on-board freezing of the catch, *and* (b) storage of the fish in a frozen condition until they are landed.

Land or *landing* means to begin offloading fish, to arrive in port with the intention of offloading fish, or to cause fish to be offloaded.

Plugs means artificial fishing lures made of wood or hard plastic with one or more hooks attached. Lures commonly known as "spoons", "wobblers", "dodgers", and flexible plastic lures are not considered plugs, and may not be used where "plugs only" are specified.

Recreational fishing means fishing with recreational fishing gear as defined annually under § 661.23 and not for the purpose of sale or barter.

Recreational fishing gear will be defined annually under § 661.23.

Regional Director means the Director, Northwest Region, National Marine Fisheries Service (7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115-0070) or his designee. For fisheries occurring primarily or exclusively in the fishery management area seaward of California, *Regional Director* means the Director, Northwest Region, National Marine Fisheries Service, acting in consultation with the Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731-7415.

Salmon means any anadromous species of the family Salmonidae and genus *Oncorhynchus*, commonly known as Pacific salmon, including but not limited to—

Chinook (king) salmon—*Oncorhynchus tshawytscha*
Coho (silver) salmon—*Oncorhynchus kisutch*
Pink (humpback) salmon—*Oncorhynchus gorbuscha*
Chum (dog) salmon—*Oncorhynchus keta*
Sockeye (red) salmon—*Oncorhynchus nerka*

Steelhead means the anadromous form of the rainbow trout, *Salmo gairdneri*.

Total length of salmon means the shortest distance between the tip of the snout or jaw (whichever extends furthest while the mouth is closed) and the tip of the longest lobe of the tail, without resort to any force or mutilation of the salmon other than fanning or swinging the tail.

Treaty Indian fishing means fishing for salmon and steelhead in the fishery management area by a person authorized by the Makah Tribe to exercise fishing rights under the Treaty with the Makah, or by the Quileute, Hoh, or Quinault Tribes to exercise fishing rights under the Treaty of Olympia.

Troll fishing gear will be defined annually under § 661.23.

Whole bait means a hook or hooks baited with whole natural bait with no device to attract fish other than a flasher.

[49 FR 43682, Oct. 31, 1984; 49 FR 46148, Nov. 23, 1984, as amended at 50 FR 813, Jan. 7, 1985; 52 FR 34808, Sept. 15, 1987; 52 FR 49020, Dec. 29, 1987; 53 FR 24655, June 29, 1988. Redesignated and amended at 53 FR 24658, June 29, 1988]

§ 661.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraphs (b) through (f) of this section.

(b) This part does not apply to fishing for pink and sockeye salmon between 48°N. latitude and the U.S.-Canada border during such times that the Pacific Salmon Commission exercises jurisdiction over such fishing under the Treaty Between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon, signed at Ottawa, January 28, 1985.

(c) Any person fishing subject to this part who also engages in fishing for groundfish should consult Federal regulations at 50 CFR Part 663 for applicable requirements of that part, including the requirement that vessels engaged in commercial fishing for groundfish (except commerical passenger vessels) have vessel identification in accordance with § 663.6 of that part.

(d) This part recognizes that any State law which pertains to persons licensed or vessels registered under the laws of that State and which is consistent with this part or any applicable Federal fishery management plan or amendment for the commercial and recreational salmon fisheries off the coasts of Washington, Oregon, and California, including any State landing law, will continue to have force and effect in the fishery management area with respect to fishing activities addressed herein.

(e) Any person fishing subject to this part is bound by the international boundaries of the fishery management area described in § 661.2, notwithstanding any dispute or negotiation between the United States and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are published by the United States.

(f) Any person fishing subject to this part who also engages in fishing for Pacific halibut should consult regulations of the International Pacific Halibut Commission at 50 CFR Part 301 for applicable requirements of that part.

[49 FR 43682, Oct. 31, 1984, as amended at 52 FR 34808, Sept. 15, 1987; 52 FR 49020, Dec. 29, 1987. Redesignated and amended at 53 FR 24658, June 29, 1988]

§ 661.4 Recordkeeping and reporting.

(a) This part recognizes that catch and effort data necessary for implementation of any applicable fishery management plan or amendment is collected by the States and Indian tribes of Washington, Oregon, California, and Idaho under existing data collection provisions. No additional catch reports will be required of fishermen or processors as long as the data collection and reporting systems operated by State agencies and Indian tribes continue to provide the Secretary with statistical information adequate for management.

(b) As appropriate, and to the extent it exists, relevant unaggregated data collected by observers placed aboard fishing vessels or by port samplers will be utilized in making preseason and inseason management adjustments to regulations as authorized by this part.

[49 FR 43682, Oct. 31, 1984, as amended at 53 FR 24656, June 29, 1988]

§ 661.5 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(1) Engage in recreational fishing while aboard a vessel engaged in commercial fishing. This restriction is not intended to prohibit the use of fishing gear otherwise permitted under the definitions of troll and recreational fishing gear which are established annually under § 661.20 so long as that gear is legal in the fishery for which it is being used.

(2) Take and retain or land salmon caught with a net in the fishery management area, except that a hand-held net may be used to bring hooked salmon on board a vessel.

(3) Fish for, or take and retain, any species of salmon:

(i) During closed seasons or in closed areas;

(ii) While possessing on board any species not allowed to be taken in the area at the time;

(iii) Once any catch limit is attained;

(iv) By means of gear or methods other than recreational fishing gear or troll fishing gear, or gear authorized under § 661.20(a)(4) for treaty Indian fishing;

(v) In violation of any notice issued under this part; or

(vi) In violation of any applicable area, season, species, zone, gear, daily bag limit, or length restriction.

(4) Take and retain or possess aboard a fishing vessel any species of salmon which is less than the applicable minimum total length, including

the applicable minimum length for dressed, head-off salmon.

(5) Possess aboard a fishing vessel a salmon, for which a minimum total length is extended, or cannot be determined, except that "dressed, head-off salmon" may be possessed aboard a "freezer trolling vessel" (unless the adipose fin of such salmon has been removed—see paragraph (b)(7) of this section).

(6) Fail to return to the water immediately and with the least possible injury any salmon the retention of which is prohibited by this part.

(7) Remove the head of any salmon caught in the fishery management area, or possess a salmon with the head removed, if that salmon has been marked by removal of the adipose fin to indicate that a coded wire tag has been implanted in the head of the fish.

(8) Take and retain, or possess any steelhead (*Salmon gairdneri*) within the fishery management area, unless such take and retention qualifies as treaty Indian fishing as that term is defined in this Subpart A of this part.

(9) Sell, barter, offer to sell, offer to barter, or purchase any salmon taken in the course of recreational salmon fishing.

(10) Refuse to submit fishing gear or catch subject to such person's control to inspection by an authorized officer, or to interfere with or prevent, by any means, such an inspection.

(11) Fish for salmon in an area when salmon of less than the legal minimum length for that area are on board the fishing vessel, except that this provision does not prohibit transit of an area when salmon of less than the legal minimum length for that area are on board so long as no fishing is being conducted.

(12) Take and retain Pacific halibut (*Hippoglossus stenolepis*) except in accordance with regulations of the International Pacific Halibut Commission at 50 CFR Part 301. Pacific halibut which cannot be retained lawfully must be returned to the water immediately and with the least possible injury.

(13) Violate any other provision of this part, the Magnuson Act, any notice issued under subpart B of this part, or any regulation or permit promulgated under the Magnuson Act.

(14) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any salmon.

(15) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search conducted in the process of enforcing the Magnuson Act.

(b) The fishery management area is closed to salmon fishing except as opened by this part or superseding regulations or notices. All open fishing periods begin at 0001 hours and end at 2400 hours local time on the dates specified.

[49 FR 43682, Oct. 31, 1984, as amended at 52 FR 34808, Sept. 15, 1987; 53 FR 24656, June 29, 1988]

§ 661.6 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 661.7 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

§ 661.8 Experimental fishing.

(a) The Secretary may allow such experimental fishing in the fishery management area as may be recommended by the Council, the Federal government, State government, or treaty Indian tribes having usual and accustomed fishing grounds in the fishery management area.

(b) The Secretary will not allow any experimental fishery recommended by the Council unless he determines that the purpose, design, and administration of the experimental fishery are consistent with the goals and objectives of the Council's fishery management plan, the national standards (section 301(a) of the Magnuson Act), and other applicable law.

(c) Each vessel participating in any experimental fishery recommended by the Council and allowed by the Secretary is subject to all provisions of this part, except those portions which relate to the purpose and nature of the experimental fishery. These exceptions will be specified in a letter issued by the Regional Director to each vessel participating in the experimental fishery and that letter must be carried aboard each participating vessel.

§ 661.9 Scientific research.

Nothing in this part is intended to inhibit or prevent any scientific or oceanographic research in the fishery management area by a scientific research vessel. The Regional Director will acknowledge any notification he might receive of any bona fide scientific or oceanographic research with respect to salmon being conducted by a scientific research vessel, by issuing to the operator or master of that vessel a letter or acknowledgment, containing information on the purpose, locations, and schedules of the activities. The Regional Director will transmit copies of this letter to the Council, and to State and Federal administrative and enforcement agencies, to ensure that all concerned parties are aware of the research activities.

§ 661.10 Treaty Indian fishing.

Except as otherwise provided in this part, treaty Indian fishing in any part of the fishery management area is subject to the provisions of this part, the Magnuson Act, and any other regulations issued under the Magnuson Act.

Subpart B—Management Measures

§ 661.20 Annual actions.

(a) The Secretary will annually establish or, as necessary, adjust management specifications for the commercial, recreational, and treaty Indian fisheries by publishing a notice in the FEDERAL REGISTER under § 661.23. Management specifications may include allowable ocean harvest levels (including quotas), allocations, management boundaries and zones, minimum size limits, gear definitions, seasons, and selective fisheries for each fishery and may be specified as follows:

(1) *Commercial fishing.* (i) Area, seasons, species, zone, and gear restrictions.

(ii) Length restrictions (minimum total lengths, in inches, and minimum lengths for dressed, head-off, in inches).

(2) *Recreational fishing.* (i) Area, season, species, zone, daily bag limits, and gear restrictions.

(ii) Length restrictions (minimum total lengths, in inches).

(3) *Quotas.* Commercial and recreational, by species (including fish caught 0–3 nautical miles seaward of Washington, Oregon, and California).

(4) *Treaty Indian fishing.* (i) Area, season, fixed or adjustable quotas, species, zone, and gear restrictions.

(ii) Length restrictions (minimum total length, in inches).

(b) *Schedule and procedures for annual actions.* The schedule and procedures for establishing and adjusting annual management specifications are described in the Appendix to this part (Section I.; II. A. and B.) The schedule will be followed to the extent possible. In the event that a deviation from the schedule occurs, it will not affect the validity of any action taken.

[49 FR 43682, Oct. 31, 1984, as amended at 52 FR 4148, Feb. 10, 1987]

§ 661.21 Inseason actions.

(a) *Fixed inseason management provisions.* The Secretary is authorized to take the following inseason management actions annually as appropriate. They are more specifically described in the appendix to this part, section III., together with the procedures for their implementation.

(1) *Automatic season closures based on quotas.* When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the FEDERAL REGISTER under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached.

(2) *Rescission of automatic closure.* If a fishery is closed under a quota before the end of a scheduled season based on overestimate of actual catch, the Secretary will reopen that fishery in as timely a manner as possible for all or part of the remaining original season provided the Secretary finds that a reopening of the fishery is consistent with the management objectives for the affected species and the additional open period is no less than 24 hours. The season will be reopened by publication of a notice in the FEDERAL REGISTER under § 661.23.

(3) *Adjustment for error in preseason estimate.* The Secretary may, by publication of a notice in the FEDERAL REGISTER under § 661.23, make appropriate changes in relevant seasons or quotas if a significant computational error or errors made in calculating preseason estimates of salmon abundance are identified.

(b) *Flexible inseason management provisions.* (1) Flexible inseason management provisions include, but are not limited to, the following:

(i) Modification of quotas and/or fishing seasons.

(ii) Modifications in the species which may be caught and landed during specific seasons and the establishment or modification of limited retention regulations.

(iii) Changes in recreational bag limits and recreational fishing days per calendar week.

(iv) Establishment or modification of gear restrictions.

(v) Modification of boundaries, including landing boundaries, and establishment of closed areas.

(2) The procedures for development and implementation of flexible inseason management provisions are described in § 661.23 and in the Appendix to this part, Section III.

[49 FR 43682, Oct. 31, 1984, as amended at 50 FR 813, Jan. 7, 1985; 50 FR 4978, Feb. 5, 1985; 52 FR 4148, Feb. 10, 1987; 52 FR 49021, Dec. 29, 1987]

§ 661.22 Other actions.

Modifications to escapement goals. Escapement goals, together with criteria and procedures for their modification, are set forth in the Appendix to this part, Section IV. The Secretary is authorized to modify an escapement goal if—

(a) A comprehensive technical review of the best scientific information available provides conclusive evidence which, in the view of the Salmon Plan Development Team and the Council, justifies modification of an escapement goal;

(b) For Oregon coastal chinook, specific stock goals are developed within the overall goal for south coast and north coast stocks respectively; or

(c) Action by a Federal court indicates that modification of an escapement goal is appropriate.

[50 FR 813, Jan. 7, 1985]

§ 661.23 Notice procedures.

(a) Actions taken under §§ 661.20, 661.21, and 661.22 will be by notice issued under this section and published in the FEDERAL REGISTER.

(b) The Secretary will publish the notice in the FEDERAL REGISTER and invite public comment prior to its effective date, except as provided in paragraph (c) of this section.

(c) If the Secretary determines, for good cause, that a notice must be issued without affording a prior opportunity for public comment, public comments on the notice will be received by the Secretary for a period of 15 days after the effective date of the notice.

(d) *Effective dates.* (1) Any notice issued under this section is effective on the date specified in the notice or on the date the notice is filed for public inspection with the Office of the Federal Register, whichever is later.

(2) Any notice issued under this section will remain in effect until the expiration date stated in the notice or until rescinded, modified, or superseded. However, no notice of an inseason action has any effect beyond the end of the calendar year in which it is issued.

(e) *Availability of data.* The Regional Director will compile in aggregate form all data and other information relevant to the action being taken and will make them available for public review during normal office hours at the Northwest Regional Office, N tional Marine Fisheries Service, 7600 Sand Point Way NE, Seattle, Washington. For actions affecting fisheries occurring primarily or exclusively in the fishery management area seaward of California, information relevent to the action also will be made available for public review during normal office hours at the Southwest Regional Office, National Marine Fisheries, 300 South Ferry Street, Terminal Island, California.

(f) Nothing contained in the part limits the authority of the Secretary to issue emergency regulations under section 305(e) of the Magnuson Act, if the Secretary determines that an emergency involving the salmon fishery exists. Such emergency regulations are effective upon filing for public inspection with the Office of the Federal Register.

[49 FR 43682, Oct. 31, 1984. Redesignated and amended at 50 FR 813, Jan. 7, 1985]

APPENDIX

I. INTRODUCTION

The regulations implementing the "Proposed Framework Plan for Managing the Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California Commencing in 1985" amend the Pacific Council's 1978 FMP to incorporate a flexible framework for setting preseason and inseason management measures without the need for a plan amendment. Under this framework amendment, certain principles and measures are fixed to provide a long-term management system, which cannot be altered without a plan amendment. Other measures are flexible and are determined before or during each season according to procedures specified in this document. The schedule for preseason modification of the regulations is shortened under this framework amendment, requiring approximately 60 days from initiation of a resource status report to implementation of regulatory changes. The framework provisions for annual adjustments, both preseason and inseason, are explained below. More detail concerning this framework mechanism and the rationale for its various components are presented in Chapter 3 of the FMP.

II. ANNUAL CHANGES TO MANAGEMENT SPECIFICATIONS

A. *Schedule for Establishing or Adjusting Annual Management Specifications.* The approximate schedule of events leading to the Secretary's annual management specifications is indicated below.

Approximate Date and Event

First week of March: The Council publishes a notice in the FEDERAL REGISTER announcing availability of documents, dates and locations of the two Council meetings to follow, dates and locations of public hearings, and the complete schedule for determining proposed and final management measures.

Second week of March: The Council's Salmon Plan Development Team (Team) distributes a report to the Council, its advisors, and the public recommending specific management measures for the upcoming season.

Third week of March: The Team's report is reviewed at a joint meeting of the Council's Scientific and Statistical Committee, the Team, and the Salmon Advisory Subpanel.

Third week of March: The Council meets to act on proposed management measures.

Last week of March: The Team distributes a report analyzing the impacts of the proposed annual management measures to the Council, its advisors, and the public.

First week of April: Public hearings.

Mid-April: The Council meets to adopt its final annual recommendations and submit them to the Secretary.

First week of May: A notice of Secretary's decision and final annual actions is published in the FEDERAL REGISTER.

May 15: Close of public comment period.

B. *Procedures for Establishing and Adjusting Annual Management Measures.* 1. Allowable ocean harvest levels and quotas. The following procedures describe the annual process used by the Salmon Team in estimating the allowable ocean harvest levels based on biological considerations. The Council may modify these estimates based on socioeconomic data and analysis, in accordance with Magnuson Act requirements, to calculate the final allowable ocean harvest levels.

(a) *Coho south of Leadbetter Point.* A preseason estimate will be made each year of the Oregon coastal natural coho salmon stock size, using the best scientific information and methodology available as determined by the Council.

(b) *Coho north or Cape Falcon.* Preseason abundance forecasts will be made for each stock based upon the best available forecasting techniques and consistent with forecasts made to establish preseason management plans for fisheries inside state waters. The Washinton Department of Fisheries/National Bureau of Standards (WDF/NBS) model will be adjusted to expected abundance levels by stocks. WDF/NBS model fishing rates will be adjusted to reflect anticipated regulations and exploitation rates asssociated with fisheries in Canada, Washington, Oregon, and California. Adult terminal run sizes will be estimated, in the absence of prior interceptions by fishermen subject to treaty Indian allocation requirements for management units with treaty obligations, using the WDF/NBS model. Treaty Indian and non-Indian harvest shares will be computed for each appropriate stock. The non-Indian troll and recreational quotas north or Cape Falcon will be computed with the WDF/NBS model based upon providing sufficient escapement from the ocean to provide for spawning escapement objectives and treaty shares of the weakest stocks. Separate quotas may be established for subareas within the area north of Cape Falcon. The allowable harvest in the area from Cape Falcon to Leadbetter Point will be established to address a blend of Oregon and Washington state coho management considerations. Specific provisions for non-Indian fishery needs inside State waters may be built into the quotas. Ocean coho quotas will be defined as either the maximum total allowable harvest of all stocks, which will be be estimated prior to the fishing season using the WDF/NBS model based on the maximum allowable harvest impact on weak stocks, or, if tools to monitor the actual catch of the ueak stocks inseason become available, as the maximum allowable ocean harvest of the weak stocks only.

(c) *California chinook.* Chinook abundance will be estimated relative to the previous year or to an average by examining factors including, but not limited to, relative ocean abundance of two-year-old and three-year-old chinook in the previous year, ocean escapements of two- and three-year-olds in key river systems in the previous year, magnitude of brood year escapements and hatchery releases, expected change in survival of hatchery fish due to changes in hatchery practices (e.g., time and location of release), and environmental factors (such as abundance of forage, floods and droughts). When a relative measure of expected chinook abundance is obtained, past management plans and their impact on escapements will be analyzed by simulation modeling to determine the appropriate harvest to meet the desired level of escapement for a four-year ocean management period. The appropriate fishing season dates which would likely produce that harvest then will be estimated after analysis of expected fishing effort. For fall chinook salmon, the end of the season will be set at the time when most maturing fish have left the ocean in order to avoid problems of hooking fish which legally must be released and to increase poundage yield by allowing all immature fish to grow be harvested in the following year.

(d) *Oregon coastal chinook south of Cape Falcon.* A relative measure of stock abundance will be derived based on factors including but not limited to, brood year escapement levels contributing to the year's fishery, catch levels in prior years, ocean assessment of two- and three-year-old chinook in previous years, relative age composition in prior years, environmental conditions, hatchery production levels, and changes in hatchery practices which might affect production. Information from prior year's fisheries will be reviewed to provide a calibration between past ocean management and resultant escapement. Past seasons will be reviewed in terms of season length, catch, fishing effort, relative stocks, abundance and escapement level to determine relationships among catch levels, stock abundance and spawning escapement. Based on established escapement goals and the factors outlined above, an appropriate level of harvest will be determined for each year's fishery. This desired catch level will be translated into a specific season structure based on the pattern of harvest over time, area distribution of catch, age structure of the population by time and area, expected redistribution of catch and effort following season adjustments in any time period or area, and management objectives for other chinook and coho stocks. The maximum season length off the Oregon coast will be May 1 through October 31. Seasons will be adjusted by time and area to maximize the harvest of mature fish of desired stocks while meeting escapement objectives. If additional restrictions are required to reduce mortality of immature chinook salmon, closures may be imposed during the period Septmeber 15 through October 31.

(e) *Chinook north of Cape Falcon.* Preseason abundance forecasts will be made for as many stocks in the unit as possible based upon the best available forecasting techniques and consistent with forecasts made to establish preseason management plans for inside fisheries. Recent years' catch, effort, and escapement levels will be used to estimate the expected harvest. When important viable stocks are known to be depressed, appropriate season and/or quotas may be developed using general indicators of relative abundance. Quotas may be apportioned to fishing periods and subareas in response to differential impacts upon stocks of concern. As acceptable monitoring tools are developed to estimate the actual harvest of specific stocks, a quota will be indentified for specific stocks rather than the total chinook harvest of all stocks. Each fishery will be managed during the season to ensure that the quota is not exceeded.

2. Allocation of ocean harvest levels.

(a) *Coho and chinook from the U.S.-Canada border to Cape Falcon.*

(i) Allocation of coho and chinook salmon north of Cape Falcon, Oregon, will be based on the following schedule:

Allowable annual non-treaty ocean coho harvest (thousands of fish)	Coho harvest percentage [1]		Chinook harvest percentage [1]	
	Commercial	Recreational	Commercial	Recreational
1,500	69	31	54	46
1,400	69	31	54	46
1,300	69	31	54	46
1,200	67	33	54	46
1,100	64	36	54	46
1,000	61	39	54	46
900	58	42	54	46
800	55	45	54	46
700	52	48	54	46
600	49	51	54	46
500	46	54	55.5	44.5
400	43	57	57	43
300	40	60	58.5	41.5
200	37	63	60	40
100	34	66	61.5	38.5
0	31	69	63	37

[1] For allowable coho harvests between the numbers shown, the allocations will be interpolated linearly. Species substitutions made at ocean harvest levels between 0 and 600,000 coho are intended to approximate an exchange ratio of four coho to one chinook, assuming a chinook harvest level of 182,000.

(ii) Total allowable ocean harvest will be maximized to the extent possible consistent with treaty obligations, State fishery needs, and spawning requirements.

(iii) If total allowable non-treaty ocean catch of coho for the area is less than 600,000, species substitution (chinook and coho) may be used to minimize hardship to either troll or recreational fisheries. Chinook equivalency for species substitution will be based upon an exchange ratio of four coho to one chinook. Every effort will be made to establish seasons and gear requirements which provide troll and recreational fleets a reasonable opportunity to catch the available harvest. In no event will species substitution exceed 25 percent of the allocations tabulated above.

(iv) The percentages presented above are averages for the entire area between Cape Falcon and the U.S.-Canada border. These percentages may be varied by major subareas if there is need to do so to protect the weak stocks. These deviations will be avoided where possible, and will be held to the minimum necessary to protect the stocks. In all cases, each major subarea, i.e., north of Leadbetter Point and south of Leadbetter Point, will retain at least 50 percent of the allocation that would have been established in the absence of transfer.

(b) *Coho south of Cape Falcon.* (i) The following allocation schedule will be used in determining preseason allocation shares of coho salmon south of Cape Falcon, Oregon. The respective shares may be altered inseason if coho initially allocated to the recreational fishery but surplus to completing the recreational seasons are reallocated to the commercial fishery in accordance with paragraph 2(b)(iii) of this section.

Allowable ocean harvest (thousands of fish)	Commercial		Recreational	
	Number (thousands)	Percentage	Number (thousands)	Percentage
2,700	2,230	82.6	470	17.4
2,600	2,140	82.3	460	17.7
2,500	2,050	82.0	450	18.0
2,400	1,960	81.7	440	18.3
2,300	1,870	81.3	430	18.7
2,200	1,780	80.9	420	19.1
2,100	1,690	80.5	410	19.5
2,000	1,600	80.0	400	20.0
1,900	1,510	79.5	390	20.5
1,800	1,420	78.9	380	21.1
1,700	1,330	78.2	370	21.8
1,600	1,240	77.5	360	22.5
1,500	1,150	76.7	350	23.3
1,400	1,060	75.7	340	24.3
1,300	970	74.6	330	25.4
1,200	880	73.3	320	26.7
1,100	790	71.8	310	28.2
1,000	700	70.0	300	30.0
900	610	67.8	290	32.2
800	520	65.0	280	35.0
700	434	62.0	266	38.0
600	348	58.0	252	42.0
500	262	52.4	238	47.6
400	176	44.0	224	56.0
350	133	38.0	217	62.0

Allowable ocean harvest (thousands of fish)	Commercial		Recreational	
	Number (thousands)	Percentage	Number (thousands)	Percentage
300	100	33.3	200	66.7
200	[1] 33	[1] 16.5	[1] 167	[1] 83.5
100	(1)	(1)	(1)	(1)

[1] An incidental coho allowance associated with any commercial all-salmon-except-coho fishery will be deducted from the recreational share of coho during periods of low coho abundance when the commercial allocation of coho under the schedule would be insufficient to allow for incidental hooking mortality of coho in the commercial all-salmon-except-coho fishery.

(ii) The allocation schedule is based on the following formula.

(A) Up to 350,000 allowable ocean harvest: the first 150,000 fish will be allocated to the recreational fishery. Additional fish will be allocated 66.7 percent to troll and 33.3 percent to recreational. The incidental coho mortality for a commercial all-salmon-except-coho fishery will be deducted from the troll allocation. If the troll allocation is insufficient for this purpose, the remaining number of coho needed for this estimated incidental coho mortality will be deducted from the recreational share.

(B) From 350,000 to 800,000 allowable ocean harvest: the recreational allocation is equal to 14 percent of the allowable harvest above 350,000 fish, plus 217,000 fish. The remainder of the allowable ocean harvest will be allocated to the troll fishery.

(C) Above 800,000 allowable ocean harvest: the recreational allocation is equal to 10 percent of the allowable harvest above 800,000 fish, plus 280,000 fish. The remainder of the allowable ocean harvest will be allocated to the troll fishery.

(D) The above formula will be used to interpolate between allowable harvest levels shown in the table above.

(iii) On or about August 1 each year, the Salmon Plan Development Team will estimate the number of coho salmon needed to complete the recreational seasons. Any coho salmon allocated to the recreational fishery which are not needed to complete the recreational seasons will be reallocated to the commercial fishery.

(iv) Allowable harvest south of Cape Falcon may be divided and portions assigned to subareas based on considerations including, but not limited to, controlling ocean harvest impacts on depressed, viable natural stocks within acceptable maximum allowable levels; stock abundance; allocation considerations; stock specific impacts; relative abundance of the salmon species in the fishery; escapement goals; and maximizing harvest potential.

3. Management boundaries and zones.

Management boundaries and zones will be established or adjusted as necessary to achieve a conservation purpose. A conservation purpose protects a fish stock, simplifies management of a fishery, or promotes wise use of fishery resources by, for example, separating fish stocks, facilitating enforcement, separating conflicting fishing activities, or facilitating harvest opportunities. Management boundaries and zones will be described by geographical references, coordinates (latitude and longitude), LORAN readings, depth contours, distance from shore, or similar criteria.

4. Minimum harvest lengths.

The minimum harvest lengths for commercial, recreational, and treaty Indian fishing may be changed upon demonstration that a useful purpose will be served. For example, an increase in minimum size for commercially-caught salmon may be necessary for conservation or may provide a greater poundage and monetary yield from the fishery while not substantially increasing hooking mortality. The removal of a minimum size for the recreational fishery may prevent wastage of fish and outweigh the detrimental impacts of harvesting immature fish.

5. Recreational daily bag limit.

Recreational daily bag limits for each fishing area will be set equal to one, two, or three salmon of same combination of species. The recreational daily bag limit for each fishing area will be set to maximize the length of the fishing season consistent with the allowable level of harvest in the area.

6. Fishing gear restrictions.

Gear restrictions for commercial, recreational, and treaty Indian fishing may be established or changed upon demonstration that a useful purpose will be served. For example, gear restrictions may be imposed or modified to facilitate enforcement, reduce hooking mortality, or reduce gear expenses for fishermen.

7. Seasons.

(a) *In general.* Seasons for commercial, recreational, and treaty Indian fishing will be established or modified taking into account allowable ocean harvest levels (and quotas), allocations between the commercial and recreational fisheries, and the estimated amount of effort required to catch the available fish based on past seasons. The limitations on recreational and commercial season beginning and ending dates listed below may be removed once stocks have been substantially rebuilt and long-term escapement goals have been met.

(b) *Inseason adjustment.* Seasons are subject to inseason adjustment according to procedures described herein.

(c) *Commercial seasons.*

(i) No commercial fishery will open prior to May 1.

(ii) No commercial coho fishery north of the Oregon-California border will open prior to July 1.

(iii) No commercial chinook or coho fishery will extend after October 31.

(iv) Commercial seasons will be established or modified taking into account wastage of fish which cannot legally be retained, size and poundage of fish caught, effort shifts between fishing areas, and protection of depressed stocks present in the fishing areas.

(v) All-species seasons will be established to allow the maximum allowable harvest of pink and sockeye salmon without exceeding allowable chinok or coho harvest levels and within conservation and allocation constraints of the pink and sockeye stocks.

(d) *Recreational seasons.* (i) No recreational fishery north of the Oregon-California border will open prior to May 1.

(ii) No recreational fishery for chinook or coho off California will open before the Saturday closest to February 15 nor extend after the Sunday closest to November 15.

(iii) If feasible, recreational seasons will be established or modified to encompass Memorial Day and Labor Day weekends, and to avoid the need for inseason closures.

8. Quotas.

(a) Quotas for commercial, recreational, and treaty Indian fishing may be modified as necessary to ensure that allowable ocean harvests are not exceeded.

(b) Quotas are subject to inseason adjustment according to the procedures herein.

(c) Quotas may be used in conjunction with season established according to the procedures herein.

9. Selective fisheries.

In addition to the all-species seasons and the all-species-except-coho seasons established for the commercial and recreational fisheries, selective coho-only, chinook-only, or pink-only fisheries may be established if harvestable fish of the target species are available; harvest of incidental species will not exceed allowable levels; proven, documented selective gear exists; significant wastage of incidental species will not occur; and the selective fishery will occur in an acceptable time and area where wastage can be minimized and target stocks are primarily available.

10. Treaty Indian fishing.

(a) The Secretary will establish or modify treaty Indian fishing seasons and/or fixed or adjustable quotas, size limits, gear restrictions, and/or area restrictions taking into account recommendations of the Council, proposals from affected tribes, and relevant Federal court proceedings.

(b) The combined treaty Indian fishing seasons will not be longer than necessary to harvest the allowable treaty Indian catch, which is the total treaty harvest that would occur if the tribes chose to take their total entitlement of the weakest stock in the fishery management area, assuming this level of harvest did not create conservation or allocation problems on other stocks.

(c) Any fixed or adjustable quotas established will be consistent with established treaty rights and will not exceed the harvest that would occur if the entire treaty entitlement to the weakest run were taken by treaty Indian fisheries in the fishery management area.

(d) If adjustable quotas are established for treaty Indian fishing, they may be subject to inseason adjustment because of unanticipated coho hooking mortality occurring during the season, catches in treaty Indian fisheries inconsistent with those unanticipated under Federal regulations, or a need to redistribute quotas to ensure attainment of an overall quota.

III. INSEASON CHANGES TO MANAGEMENT MEASURES

A. *Fixed inseason management provisions.* The following inseason management provisions are not optional and will be used annually as appropriate without the need for Council action.

1. *Automatic season closures based on quotas.* When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the FEDERAL REGISTER under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached.

2. *Rescission of automatic closure.* If, following the closing of a fishery after a quota is reached, it is discovered that the actual catch was overestimated and the season was closed prematurely, the Secretary is authorized to reopen the fishery if—

(a) The shortfall is sufficient to allow at least one full day's fishing (24 hours) based on the best information available concerning expected catch and effort; and

(b) The unused portion of the quota can be taken before the scheduled season ending.

The Secretary's decision to reopen a fishery will be based upon projections and estimates of catch by the Salmon Plan Development Team, and will be made in consultation with the Council Chairman and Fisher-

best copy available

ies Directors of the affected States. If the fishery is reopened, its duration will be limited to complete fishing days, (24 hour increments) and coordinated, to the extent possible, with State management agencies to assure that the quota is not exceeded.

3. *Adjustment for error in preseason estimates.* The Secretary may make changes in seasons or quotas if a significant computational error or errors made in calculating preseason estimates of salmon abundance have been identified; provided that such correction to a computational error can be made in a timely fashion to affect the involved fishery without disrupting the capacity to meet the objectives of the management plan. Such correction and adjustments to seasons and quotas will be based on a Council recommendation and Salmon Plan Development Team analysis.

B. *General procedures for flexible inseason management provisions.*

1. Fishery managers must determine that any inseason adjustment in management measures is consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, ocean escapement goals, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation scheme in the FMP. In addition, all inseason adjustments will be based on consideration of the following factors:

(a) Predicted sizes of salmon runs;

(b) Harvest quotas and hooking mortality limits for the area and total allowable impact limitations if applicable;

(c) Amount of the recreational, commercial, and treaty Indian catch for each species in the area to date;

(d) Amount of recreational, commercial, and treaty Indian fishing effort in the area to date;

(e) Estimated average daily catch per fisherman;

(f) Predicted fishing effort for the area to the end of the scheduled season; and

(g) Other factors as appropriate.

2. For those actions taken during the season, the following procedures will be followed:

(a) Prior to taking any inseason action the Regional Director will consult with the Chairman of the Council and the appropriate State Directors.

(b) As the actions are taken by the Secretary, the Regional Director will compile in aggregate form all data and other information relevent to the action being taken and will make them available for public review during normal office hours at the Northwest Regional Office, National Marine Fisheries Service, 7600 Sand Point Way NE, Seattle, Washington.

(c) Inseason actions will be published by a notice in the FEDERAL REGISTER. In addition, the Regional Director and the Council will publish notice of the inseason action in local and regional news media.

(d) If the Secretary determines, for a good cause, that a notice must be issued without affording a prior opportunity for public comment, public comments on the notice will be received by the Secretary for a period of 15 days after the effective date of the notice.

IV. ESCAPEMENT GOALS

A. *Current escapement goals.*

The following specific escapement goals are in effect unless modified as provided herein. Annual management objectives for Washington coastal fall, spring, and summer chinook; Puget Sound chinook; Washington coastal coho; and Puget Sound coho are developed through fixed procedures established in the U.S. District Court.

SUMMARY OF SPECIFIC MANAGEMENT GOALS FOR STOCKS IN THE SALMON MANAGEMENT UNIT

System	Spawning [1] escapement goal	Rebuilding schedule
Sacramento Fall Chinook [2]	Range of 122–180,000 for natural and hatchery.	
Klamath Fall Chinook	97,500 natural; 17,500 hatchery	Achieve in-river run sizes (natural and hatchery continued) as follows: 1983–86 68,900 1987–90 82,700 1991–94 99,200 1995–98 [3] + 115,000
Oregon Coastal Chinook	150–200,000 natural	
Columbia River Chinook:		
Upper River Fall	40,000 bright adults above McNary Dam.	
Upper River Summer	80,000 adults above Bonneville	
Upper River Spring	100–200,000 adults above Bonneville	
Lower River Spring (Willamette)	30–35,000	
Columbia River and Oregon Coastal Coho	Oregon coastal natural (OCN) coho spawning escapement goal is based on OCN coho stock abundance. [4]	

SUMMARY OF SPECIFIC MANAGEMENT GOALS FOR STOCKS IN THE SALMON MANAGEMENT UNIT—Continued

System	Spawning [1] escapement goal	Rebuilding schedule
Puget Sound Pink	900,000 natural	
Lake Washington Sockeye [5]	300,000 to Lake Washington	
Columbia River Sockeye [5]	80,000 over Priest Rapids	

[1] Represents adult natural spawning escapement goal for viable natural stocks or adult hatchery return goal for stocks managed for artificial production.

[2] The Sacramento River escapement goal is presented as a range within which annual escapements can be expected to vary. Achieving the upper end of the range, especially for the up-river chinook stocks, will be contingent upon solving the problems associated with the Red Bluff Diversion Dam.

[3] The long-term Klamath River escapement goals of 115,000 chinook is spawning escapement to which in-river harvest must be added to calculate the ocean escapement goal.

[4] Achieve escapement of OCN coho natural spawning stocks as follows:

Estimated stock size	Spawning escapement goal
Up to 270,000	135,000
270,000 to 400,000	one-half of stock size
Over 400,000	200,000

[5] These stocks represent a negligible component of the Washington ocean harvest.

B. *Modification of escapement goals.*

1. At any time during the year, the Team may conduct a comprehensive technical review of existing biological data to determine whether a change in escapement goals is warranted.

2. The Team will submit any recommendation for modifying an escapement goal with justification to the Council. The recommendation must be based on the best scientific information available and provide conclusive technical evidence to justify modification of an escapement goal.

3. If the recommendation for change is approved by the Council, the Secretary may change the escapement goal if he determines that such a change is justified.

4. Appropriate changes in escapement goals may be made in response to action by a Federal court without regard to the procedures listed above.

5. For Oregon coastal chinook, if the Oregon Department of Fish and Wildlife develops specific goals for north coast and south coast stocks within the overall goal, these changes may be made by the Secretary without regard to the procedures listed above.

6. Modification of escapement goals will be published by notice in the FEDERAL REGISTER under § 661.23.

[49 FR 43682, Oct. 31, 1984; 49 FR 46148, Nov. 23, 1984, as amended at 50 FR 813, Jan. 7, 1985; 50 FR 4978, Feb. 5, 1985; 50 FR 42530, Oct. 22, 1985; 52 FR 4148, 4149, Feb. 10, 1987; 52 FR 49021, Dec. 29, 1987]

EFFECTIVE DATE NOTE: At 53 FR 16012, May 4, 1988, an emergency interim rule was published, effective from May 1, 1988 through July 29, 1988. At 53 FR 29235, Aug. 3, 1988, portions of this rule were extended through October 27, 1988. For the convenience of the user the amendments to the rule and the amendatory language of its extension appear below.

* * * * *

PART 661 [AMENDED]

* * * * *

1. In § 661.3, the current definition for "Land" or "landing", is revised to read as follows:

§ 661.3 Definitions.

* * * * *

Land or *landing*, means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish aboard the vessel are considered part of the landing.

* * * * *

Appendix [Amended]

2. In the Appendix, section II.B.2., in paragraph (a)(iii) in the last sentence, the value "25 percent" is suspended, and the value "34 percent" is added to be effective from May 1 through July 29, 1988.

3. In the Appendix, section II.B.2. is amended by adding paragraph (a)(v), to read as follows:

II. ANNUAL CHANGES TO MANAGEMENT SPECIFICATIONS

* * * * *

B. * * *

2. * * *

(a) * * *

(v) On or about July 1, 1988, the Salmon Technical Team will estimate the number of chinook salmon caught in the all-except-coho commercial season. Any chinook salmon remaining in the commercial quota will be reallocated to the reactional fishery.

* * * * *

4. In the Appendix, in section II.B.7. paragraph (c)(ii) is suspended from May 1 through July 29, 1988.

5. In the Appendix, in section IV.A., in the table, Summary of Specific Management Goals for Stocks in the Salmon Management Unit, the line pertaining to Klamath Fall Chinook is amended in the third column by adding a Note following the list of years to read as follows:

IV. ESCAPEMENT GOALS

A. * * *

System	Spawning escapement goal	Rebuilding schedule	
*	*	*	*
Klamath Fall Chinook			
		Note:	
		1988	132,000

* * * * *

Appendix to Part 661—[Amended]

The following amendments to the appendix to Part 661 which were published on May 4, 1988 at 53 FR 16012 are extended:

1. The amendment to section II.B.2 is extended to be effective through October 27, 1988.

2. The temporary suspension of paragraph (c)(ii) in section II.B.7. is extended to be effective through October 27, 1988.

PART 662—NORTHERN ANCHOVY FISHERY

Subpart A—General

Sec.
662.1 Purpose and scope.
662.2 Definitions.
662.3 Relation to other laws.
662.4 Recordkeeping and reporting.
662.5 Vessel identification.
662.6 Prohibitions.
662.7 Facilitation of enforcement.
662.8 Penalties.

Subpart B—Management Measures

662.20 Harvest quota
662.21 Closures.
662.22 Fishing seasons.
662.23 Closed areas.
662.24 Gear limitations.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 49 FR 9572, Mar. 14, 1984, unless otherwise noted.

Subpart A—General

§ 662.1 Purpose and scope.

This part governs fishing for northern anchovy by vessels of the United States in the Pacific anchovy fishery area (PAFA). These regulations implement the Northern Anchovy Fishery Management Plan (FMP) developed by the Pacific Fishery Management Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) as amended.

§ 662.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Anchovy means fish of the species *Engraulis mordax*, or parts or products thereof.

Council means the Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, Oregon 97201.

Fishing year means a 12-month period beginning August 1 and extending through July 31 of the following year.

Live bait fishery means fishing for northern anchovies for use as live bait in other fisheries.

Nonreduction fishery means fishing for northern anchovies for use as dead bait or providing fish for human consumption.

Northern anchovy means fish of the species *Engraulis mordax*, or parts or products thereof.

PAFA means the Pacific anchovy fishery area which is the EEZ seaward of California, and between 38° N. latitude (Point Reyes) and the United States-Mexico International Boundary which is a line connecting the following coordinates:

32°35′22″ N. latitude, 117°27′49″ W. longitude
32°37′37″ N. latitude, 117°49′31″ W. longitude
31°07′58″ N. latitude, 118°36′18″ W. longitude

30°32'31" N. latitude, 121°51'58" W. longitude

Reduction fishery means fishing for northern anchovies for the purposes of conversion into fish flour, fish meal, fish scrap, fertilizer, fish oil, or other fishery products or byproducts for purposes other than direct human consumption.

Reduction harvest quota means the amount of anchovies, by weight, which may be harvested during a fishing year for reduction purposes.

Regional Director means the Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731, or a designee.

Spawning biomass means the estimated amount, by weight, of all sexually mature northern anchovies in the central subpopulation (defined as) from 38° N. latitude (Point Reyes) south to approximately 30° N. latitude at Punta Baja, Baja California.

Special allocations means that part of the total harvest quota reserved for nonreduction fishing, reduction fishing in subarea A, and any conservation purpose.

Subarea A means the northern portion of the PAFA between 38° N. latitude (Point Reyes), and a southern limit at 35°14' N. latitude (Point Buchon).

Subarea B means the southern portion of the PAFA between 35°14' N. latitude (Point Buchon), and the United States-Mexico International Boundary described in this section.

Subarea B harvest quota means the amount of anchovies, by weight, which may be harvested during a fishing year for reduction purposes in Subarea B.

Total harvest quota means the total amount of anchovies, by weight, which may be harvested during a fishing year by the reduction and nonreduction fisheries.

[49 FR 9572, Mar. 14, 1984, as amended at 53 FR 24655, 24660, June 29, 1988]

§ 662.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter.

(b) Any State law which pertains to vessels registered under the laws of that State while fishing in the EEZ and which is consistent with the Federal regulations will continue to have force and effect on fishing activities addressed in this part.

(c) If a vessel has filed with the State of California a declaration of intent to take anchovies for reduction purposes, it will be conclusively presumed that amy fishing for anchovies by that vessel is for reduction purposes unless an exemption to the declaration has been filed with the State of California.

[53 FR 24658, June 29, 1988]

§ 662.4 Recordkeeping and reporting.

Data regarding fishing vessels, fishing activities, landings and processing activities required by the FMP for the reduction and nonreduction fisheries are collected by the State of California under existing data collection provisions. No additional reports will be required of fishermen or processors as long as the data collection and reporting systems operated by the State of California continue to provide the Secretary with statistical information adequate for management. Reporting requirements may be promulgated by emergency regulations if this reporting system becomes inadequate for management purposes.

§ 662.5 Vessel identification.

(a) *Official number.* Each fishing vessel in the reduction fishery must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft. The official number is the anchovy reduction registration number issued by the State of California.

(b) *Numerals.* The official number must be affixed to each vessel subject to this part in block Arabic numerals at least 14 inches in height. Markings must be legible and of a color that contrasts with the background.

[49 FR 9572, Mar. 14, 1984, as amended at 53 FR 24658, June 29, 1988]

§ 662.6 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for anchovies in the PAFA:

(1) During any applicable closed season or in any applicable closed area specified in this part;

(2) During any applicable closure specified in this part; or

(3) Aboard a fishing vessel which has not filed an applicable declaration of intent with the State of California.

(b) Take or retain anchovies for reduction purposes in the PAFA unless they are taken with authorized fishing gear as specified in § 662.24.

[49 FR 9572, Mar. 14, 1984, as amended at 53 FR 24658, June 29, 1988]

§ 662.7 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 662.8 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

Subpart B—Management Measures

§ 662.20 Harvest quota.

(a) *Announcement of harvest quotas.* The total harvest quota, reduction harvest quota, subarea B harvest quota, and special allocations will be determined by the Regional Director from the estimated spawning biomass according to the formulas in paragraph (b) of this section. An announcement of the estimated spawning biomass and preliminary determination of harvest quotas will be made by notice in the FEDERAL REGISTER on or about July 1 each year. Opportunity for public comment will be provided in the preliminary announcement. A final announcement of harvest quotas and special allocations will be made by notice in the FEDERAL REGISTER on or about August 1 of each year.

(b) *Determination of harvest quotas.* The total harvest quota in the PAFA will be determined by adding the nonreduction fishery allocation in the PAFA and the reduction harvest quota in the PAFA which will be separately determined by the following formulas. There is no harvest quota in the PAFA for the live bait fishery.

(1) When the estimated spawning biomass is less than 300,000 mt, there will be no reduction harvest quota and the nonreduction allocation in the PAFA will be 4,900 mt.

(2) When the estimated spawning biomass is equal to or greater than 300,000 mt, the reduction harvest quota in the PAFA will be 70 percent of the estimated spawning biomass in excess of 300,000 mt or 140,000 mt, whichever is less, and the nonreduction fishery allocation in the PAFA will be 4,900 mt except as specified in § 662.21(b).

(c) *Subarea B harvest quota.* The reduction harvest quota for subarea B will be equal to the reduction harvest quota in the PAFA minus a reserve of 10 percent of the reduction harvest quota or 9,072 mt, whichever is less. This reserve is allocated to the reduction fishery in subarea A except as provided in paragraph (d) of this section.

(d) *Reallocation of subarea A reserve.* The Secretary may reallocate on June 1 from subarea A to subarea B that portion of the reserve allocated to subarea A under paragraph (c) of this section which will not be harvested in subarea A by the end of the fishing year. This amount will be estimated based on catch to date in the current year and the expected intentions of processors and fishermen in the reduction fishery north of Point Buchon to harvest anchovies in the remaining fishing year. Reallocation under this paragraph will be based first, on a need to increase the subarea B harvest quota and secondly, on the projected reduction harvest in subarea A to the end of the fishing year.

(e) *Procedure for reallocation of subarea A reserve.* (1) The Secretary may, by May 1 each year, determine the need to increase the subarea B harvest quota as provided in paragraph (d) of this section if the expected reduction fishery harvest in subarea B is an amount equal to or greater than the subarea B harvest quota. After making a determination that the subarea B harvest quota needs to be increased as provided in paragraph (d) of this section, the Secretary will make the estimate under paragraph (d) of this section on or about May 15 and, as soon as practicable after June 1, announce to all reduction fishing vessel owners and operators and licensed anchovy reduction plant operators by notice in the FEDERAL REGISTER and other appropriate notice—

(i) The change in the subarea B quota;

(ii) The reasons for the change; and

(iii) A summary of, and responses to, any comments submitted under paragraph (e)(3) of this section.

(2) The Regional Director will compile in aggregate form all data used to make the estimates under paragraph (d) of this section and make them available for public inspection during normal business hours at the Southwest Regional Office, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

(3) Comments from the public on the estimates made under paragraph (d) of this section may be submitted to the Regional Director until May 31.

(f) Anchovies harvested for reduction and nonreduction purposes in the PAFA and adjacent territorial sea will be counted toward the total harvest quota.

§ 662.21 Closures.

(a) *Closure of the reduction fishery.* The Secretary will close the reduction fishery during the open season provided in § 662.22 when the total harvest quota in the PAFA is taken. The Secretary will close only the reduction fishery in subarea B when the subarea B reduction harvest quota is taken.

(b) *Closure of the nonreduction fishery.* The Secretary will close the nonreduction fishery in the PAFA only if the total harvest quota is taken.

(c) *Procedure for closing.* (1) When the harvest quotas prescribed in § 662.20 are about to be taken, the Secretary will announce, by notice in the FEDERAL REGISTER and to the Council and the California Department of Fish and Game, the date of closure in one or both subareas.

(2) If a reduction fishery closure is announced, the reduction fishery in the affected subarea will cease on the date of closure specified in the FEDERAL REGISTER notice provided by paragraph (c)(1) of this section, and will not resume until a final determination of new harvest quotas is announced under § 662.20.

(3) The nonreduction fishery in the PAFA ceases on the date that a total harvest quota closure is announced under paragraph (c)(1) of this section, and will not resume until a new harvest quota is announced under § 662.20.

§ 662.22 Fishing seasons.

All open seasons will begin at 0001 hours and terminate at 2400 hours local time. The PAFA is closed to anchovy fishing except as follows:

(a) *Nonreduction fishing season.* The open season for nonreduction fishing in the PAFA is from August 1 to July 31.

(b) *Reduction fishing season.* (1) In subarea A, the open season for reduction fishing in the PAFA is from August 1 to June 30; and

(2) In subarea B, the open season for reduction fishing in the PAFA is from September 15 to June 30.

§ 662.23 Closed areas.

(a) *Nonreduction fishery.* There are no closed areas for nonreduction fishing in the PAFA.

(b) *Reduction fishery.* The following areas are closed to reduction fishing:

(1) *Farallon Islands closure* (see Figure 1). The portion of subarea A bounded by—(i) A straight line joining Pigeon Point Light (37°10.9′ N. latitude, 122°23.6′ W. longitude) and the U.S. navigation light on Southeast Farallon Island (37°42.0′ N. latitude, 123°00.1′ W. longitude); and

(ii) A straight line joining the U.S. navigation light on Southeast Farallon Island (37°42.0′ N. latitude, 123°00.1′ W. longitude) and the U.S. navigation light on Point Reyes (37°59.7′ N. latitude, 123°01.3′ W. longitude).

(2) *Subarea B closures* That portion of subarea B described as—

(i) *Oxnard closure.* (see Figure 1). The area that extends offshore four (4) miles from the mainland shore between lines running 250° true from the steam plant stack at Manadalay Beach

(34°12.4' N. latitude, 119°15.0' W. longitude) and 220° true from the steam plant stack at Ormond Beach (34°07.8' N. latitude, 119°10.0' W. longitude).

(ii) *Santa Monica Bay closure* (see Figure 1). Santa Monica Bay shoreward of that line from Malibu Point (34°01.8' N. latitude, 188°40.8' W. longitude) to Rocky Point (Palos Verdes Point) (33°46.5' N. latitude, 118°25.7' W. longitude).

(iii) *Los Angeles Harbor closure* (see Figure 1). The area outside Los Angeles Harbor described by a line extending six miles 180° true from Point Fermin (33°42.3' N. latitude, 118°17.6' W. longitude) and then to a point located three (3) miles offshore on a line 225° true from Huntington Beach Pier (33°39.2' N. latitude, 118°00.3' W. longitude).

(iv) *Oceanside to San Diego closure* (see Figure 1). The area six (6) miles from the mainland shore south of a line running 225° true from the tip of the outer breakwater (33°12.4' N. latitude, 117°24.1' W. longitude) of Oceanside Harbor to the United States-Mexico International Boundary.

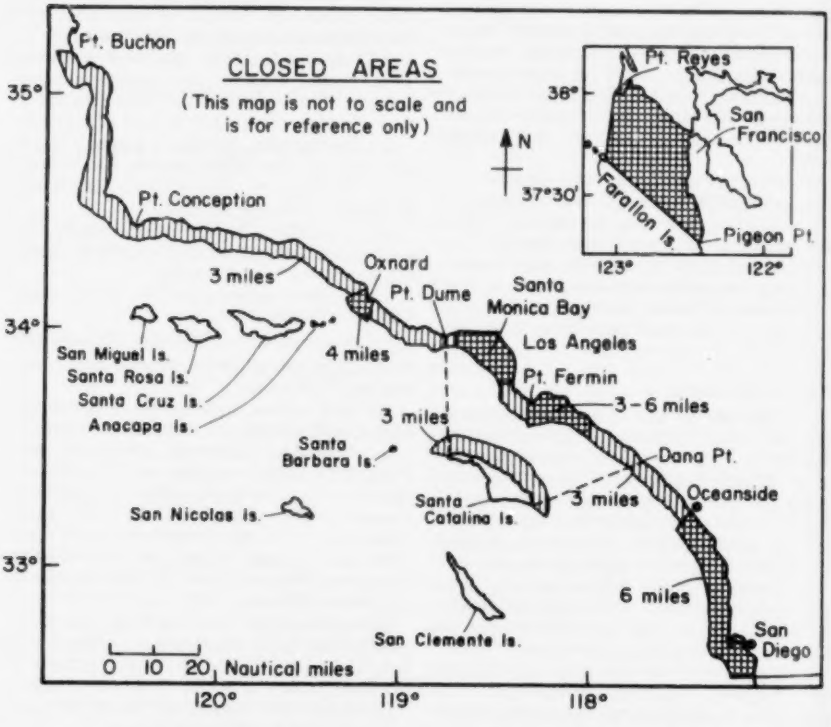
CLOSED AREAS
(This map is not to scale and is for reference only)
Pt. Buchon
Pt. Conception
3 miles
Oxnard
Pt. Dume
Santa Monica Bay
Los Angeles
Pt. Fermin
3-6 miles
4 miles
3 miles
Dana Pt.
Oceanside
3 miles
6 miles
San Diego
San Miguel Is.
Santa Rosa Is.
Santa Cruz Is.
Anacapa Is.
Santa Barbara Is.
San Nicolas Is.
Santa Catalina Is.
San Clemente Is.
N
Pt. Reyes
San Francisco
Farallon Is.
Pigeon Pt.
38°
37°30'
123°
122°
35°
34°
33°
0 10 20 Nautical miles
120°
119°
118°

Figure 1. Existing California area closures (hatched areas extend to 3 miles offshore; cross-hatched areas extend beyond 3 miles offshore) and optional Catalina Channel foreign vessel closure (outlined by dashed lines).

§ 662.24 Gear limitations.

(a) *Nonreduction fishery.* There are no limitations on gear used in the nonreduction fishery.

(b) *Reduction fishery.* Authorized fishing gear only may be used in the reduction fishery. Beginning on April 1, 1986, authorized fishing gear will be round haul nets which have a minimum wet-stretch mesh size of $^{10}/_{16}$ of an inch excluding the bag portion of a purse seine. The bag portion must be constructed as a single unit and must not exceed a rectangular area adjacent to 20 percent of the total corkline of the purse seine. Minimum mesh size requirements are met if a stainless steel wedge can be passed with only thumb pressure through 16 of 20 sets of two meshes each of wet mesh. The wedges used to measure trawl mesh size are made of 20 gauge stainless steel, and will be no wider than $^{10}/_{16}$ of an inch less one thickness of the metal at the widest part.

PART 663—PACIFIC COAST GROUNDFISH FISHERY

Subpart A—General Provisions

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663.29 Scientific research.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 47 FR 43974, Oct. 5, 1982, unless otherwise noted.

Subpart A—General Provisions

§ 663.1 Purpose and scope.

(a) The regulations in this part govern fishing for groundfish by fishing vessels of the United States in the EEZ off the coasts of Washington, Oregon, and California.

(b) Regulations governing fishing for groundfish by fishing vessels other than vessels of the United States are published at 50 CFR Part 611, Subpart A and § 611.70.

(c) These regulations implement the Pacific Coast Groundfish Plan developed by the Pacific Fishery Management Council for groundfish fisheries off the coasts of Washington, Oregon, and California.

[47 FR 43974, Oct. 5, 1982, as amended at 53 FR 24660, June 29, 1988]

§ 663.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Acceptable biological catch (*ABC*) means a seasonally determined catch that may differ from maximum sustainable yield (MSY) for biological reasons.

Commercial fishing means fishing by a person in possession of a valid personal State commercial fishing license, or fishing by a person on a vessel which also has aboard a person in possession of a valid personal State commercial fishing license.

Fishery management area means the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nautical miles offshore, and bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico.

Fishing gear:

(a) *Bobbin trawl* means the same as a roller trawl.

(b) *Bottom trawl* means a trawl in which the otter boards or the footrope of the net are in contact with the seabed. It includes Danish and Scottish seine gear.

(c) *Chafing gear* means webbing or other material attached to the bottom (underside) or around the codend of a trawl net to protect the codend from wear.

(d) *Codend* means the terminal, closed end of a trawl net.

(e) *Double-ply mesh* means double twine tied into a single knot.

(f) *Double-walled codend* means a codend constructed of two walls of webbing.

(g) *Gillnet* means a single-walled, rectangular net which is set upright in the water.

(h) *Hook-and-line* means one or more hooks attached to one or more lines.

(i) *Longline* means a stationary, buoyed, and anchored groundline with hooks attached.

(j) *Pelagic (midwater or off-bottom) trawl* means a trawl in which the otter boards may be in contact with the seabed but the footrope of the net remains above the seabed.

(k) *Pot* means a trap.

(l) *Roller trawl* means a trawl net with footropes equipped with rollers or bobbins made of wood, steel, rubber, plastic, or other hard material which keep the footrope above the seabed thereby protecting the net.

(m) *Set net* means a stationary, buoyed, and anchored gillnet or trammel net.

(n) *Single-walled codend* means a codend constructed of a single wall of webbing knitted with single or double-ply mesh.

(o) *Spear* means a sharp, pointed, or barbed instrument on a shaft.

(p) *Trammel net* means a gillnet made with two or more walls joined to a common float line.

(q) *Trap* means a portable, enclosed device with one or more gates or entrances and one or more lines attached to surface floats.

(r) *Trawl mesh size* means the distance between the inside of one knot and the inside of the opposing knot in the trawl mesh.

(s) *Trawl net* means a cone or funnel-shaped net which is towed through the water by one or two vessels.

(t) *Trawl riblines* means heavy rope or lines that run down the sides, top, or underside of a trawl net from the mouth of the net to the terminal end of the codend to strengthen the net during fishing.

Fishing trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel lands fish.

Fishing year means the year beginning at 0801 GMT (0001 local time) on January 1 and ending at 0800 GMT on January 1 (2400 local time on December 31).

Groundfish means species managed by the Pacific Coast Groundfish Plan, specifically:

COMMON NAME AND SCIENTIFIC NAMES

Sharks:
leopard shark, *Triakis semifasciata*
soupfin shark, *Galcorhinus zyopterus*
spiny dogfish, *Squalus acanthias*
Skates:
big skate, *Raja binoculata*
California skate, *R. inornata*
longnose skate, *R. rhina*
Ratfish: ratfish, *Hydrolagus colliei*
Morids: finescale codling, *Antimora microlepis*
Grenadiers: Pacific rattail, *Coryphaenoides acrolepis*
Roundfish:
cabezon, *Scorpaenichthys marmoratus*
•jack mackerel (north of 39° N. latitude), *Trachurus symmetricus*
kelp greenling, *Hexagrammos decagrammus*
lingcod, *Ophiodon elongatus*
Pacific cod, *Gadus macrocephalus*
•Pacific whiting, *Merluccius products*
•sablefish, *Anoplopoma fimbria*
Rockfish:
aurora rockfish, *Sebastes aurora*
bank rockfish, *S. rufus*
black rockfish, *S. melanops*
black and yellow rockfish, *S. chrysomelas*
blackgill rockfish, *S. melanostomus*
blue rockfish, *S. mystinus*
bocaccio, *S. paucispinis*
bronzespotted rockfish, *S. gilli*
brown rockfish, *S. auriculatus*
calico rockfish, *S. dalli*
California scorpionfish, *Scorpaena guttata*
canary rockfish, *Sebastes pinniger*
chilipepper, *S. goodei*
China rockfish, *S. nebulosus*
copper rockfish, *S. caurinus*
cowcod, *S. levis*
darkblotched rockfish, *S. crameri*
dusty rockfish, *S. ciliatus*
flag rockfish, *S. rubrivinctus*
gopher rockfish, *S. carnatus*
grass rockfish, *S. rastrelliger*
greenblotched rockfish, *S. rosenblatti*
greenspotted rockfish, *S. chlorostictus*

greenstriped rockfish, *S. elongatus*
harlequin rockfish, *S. variegatus*
honeycomb rockfish, *S. umbrosus*
kelp rockfish, *S atrovirens*
longspine thornyhead, *Sebastolobus altivelis*
Mexican rockfish *Sebastes macdonaldi*
olive rockfish, *S. serranoides*
•Pacific ocean perch, *S. alutus*
pink rockfish, *S. eos*
quillback rockfish, *S. maliger*
redbanded rockfish, *S. babcocki*
redstripe rockfish, *S. proriger*
rosethorn rockfish, *S. helvomaculatus*
rosy rockfish, *S. rosaceus*
rougheye rockfish, *S. aleutianus*
sharpchin rockfish, *S. zacentrus*
•shortbelly rockfish, *S. jordani*
shortraker rockfish, *S. borealis*
shortspine thornyhead, *Sebastolobus alascanus*
silvergray rockfish, *Sebastes brevispinis*
speckled rockfish, *S. ovalis*
splitnose rockfish, *S. diploproa*
squarespot rockfish, *S. hopkinsi*
starry rockfish, *S. constellatus*
stripetail rockfish, *S. saxicola*
tiger rockfish, *S. nigrocinctus*
treefish, *S. serriceps*
vermilion rockfish, *S. miniatus*
•widow rockfish, *S. entomelas*
yelloweye rockfish, *S. ruberrimus*
yellowmouth rockfish, *S. reedi*
yellowtail rockfish, *S. flavidus*

All genera and species of the family Scorpaenidae that occur off Washington, Oregon, and California are included, even if not listed above. The Scorpaenidae genera and *Sebastes, Scorpaena, Scorpaenodes,* and *Sebastolobus.*

Flatfish:
arrowtooth flounder [arrowtooth turbot], *Atheresthes stomias*
butter sole, *Isopsetta isolepis*
curlfin sole, *Pleuronichthys decurrens*
Dover sole, *Microstomus pacificus*
English sole, *Parophrys vetulus*
flathead sole, *Hippoglossoides elassodon*
Pacific sanddab, *Citharichthys sordidus*
petrale sole, *Eopsetta jordani*
rex sole, *Glyptocephalus zachirus*
rock sole, *Lepidopsetta bilineata*
sand sole, *Psettichthys melanostictus*
starry flounder, *Platichthys stellatus*

NOTE: Only those species marked with an asterisk (•) have a numerical OY; the others are in the "other species" complex. See § 663.21.

Incidental catch or *incidental species* means groundfish species caught while fishing for the primary purpose of catching a different species.

Land or *landing* means to begin offloading any fish, to arrive in port with the intention of offloading any fish, or to cause any fish to be offloaded.

Maximum sustainable yield (*MSY*) means an average over a reasonable length of time of the largest catch which can be taken continuously from a stock.

Pacific Coast Groundfish Plan means the fishery management plan (FMP) for the Washington, Oregon, and California groundfish fishery developed by the Pacific Fishery Management Council and approved by the Secretary of Commerce on January 4, 1982, and as it may be subsequently amended.

Recreational fishing means fishing with authorized recreational fishing gear for personal use only, and not for sale or barter.

Regional Director means the Northwest Regional Director, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, Washington 98115. For fisheries occurring primarily or exclusively in the fishery management area seaward of California, *Regional Director* means the Northwest Regional Director, National Marine Fisheries Service, acting upon the recommendation of the Southwest Regional Director, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Trip limit means the total allowable amount of a groundfish species or species complex by weight, or by percentage of weight of fish on board, which may be landed from a single fishing trip. All weights are in round weight (the weight of the whole fish) unless specified otherwise.

[47 FR 43974, Oct. 5, 1982; 48 FR 13048, Mar. 29, 1983, as amended at 49 FR 27519, July 5, 1984; 53 FR 24655, 24660, June 29, 1988]

§ 663.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraphs (b) and (c) of this section.

(b) *Federal laws*—(1) *Pacific halibut.* Fishing for Pacific halibut is governed by the regulations promulgated by the

International Pacific Halibut Commission and approved by the United States (see Part 301 of this title).

(2) *Salmon.* Fishing for salmonids in the Pacific Fishery Management Council's fishery management area is governed by Federal regulations at Part 661 of this title. Fishing for pink and sockeye salmon between 48°00′ N. latitude and the Provisional International Boundary between the United States and Canada (United States Convention waters) is governed by the Convention for the Protection, Preservation, and Extension of the Sockeye Salmon Fishery of the Fraser River System as amended by the Pink Salmon Protocol (see Part 371 of this title).

(3) *Anchovy.* Fishing for northern anchovy in the Pacific Fishery Management Council's Pacific Anchovy Fishery Area (south of 38°00′ N. latitude) is governed by Federal regulations at Part 662 of this title.

(c) *State laws.* This part recognizes that any State law which pertains to vessels registered under the laws of that State while in the fishery management area, and which is consistent with the Pacific Coast Groundfish Plan, including any State landing law, shall continue in effect with respect to fishing activities regulated under this part.

[47 FR 43974, Oct. 5, 1982; 48 FR 3623, Jan. 26, 1983, as amended at 53 FR 24655, June 29, 1988]

§ 663.4 Recordkeeping and reporting.

This part recognizes that catch and effort data necessary for implementing the Pacific Coast Groundfish Plan are collected by the States of Washington, Oregon, and California under existing State data collection requirements. Telephone surveys of domestic industry (see § 611.70(d) and § 663.24) will be conducted biannually by the NMFS to determine amounts of fish which will be made available to foreign fishing and joint venture processing. No additional Federal reports are required of fishermen or processors as long as the data collection and reporting systems operated by State agencies continue to provide the Secretary with statistical information adequate for management.

[47 FR 43974, Oct. 5, 1982, as amended at 53 FR 24656, 24658, June 29, 1988]

§ 663.5 Management subareas.

(a) The fishery management area is divided into five subareas for the regulation of groundfish fishing, with the following designations and boundaries:

(1) *Vancouver.* (i) Northeastern boundary—that part of a line connecting the light on Tatoosh Island, Washington, with the light on Bonilla Point on Vancouver Island, British Colombia (at 48°35′75″ N. latitude, 124°43′00″ W. longitude) south of the International Boundary between the United States and Canada (at 48°29′37.19″ N. latitude, 124°43′33.19″ W. longitude), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(ii) Northern and northwestern boundary is a line connecting the following coordinates in the order listed, which is the provisional international boundary of the U.S. FCZ as shown on NOAA/NOS Charts #18480 and #18007:

Point	N. latitude	W. longitude
1	48°29′37.19″	124°43′33.19″
2	48°30′11″	124°47′13″
3	48°30′22″	124°50′21″
4	48°30′14″	124°54′52″
5	48°29′57″	124°59′14″
6	48°29′44″	125°00′08″
7	48°28′09″	125°05′47″
8	48°27′10″	125°08′25″
9	48°26′47″	125°09′12″
10	48°20′16″	125°22′48″
11	48°18′22″	125°29′58″
12	48°11′05″	125°53′48″
13	47°49′15″	126°40′57″
14	47°36′47″	127°11′58″
15	47°22′00″	127°41′23″
16	46°42′05″	128°51′56″
17	46°31′47″	129°07′39″

(iii) Southern limit: 47°30′ N. latitude.

(2) *Columbia.* (i) Northern limit: 47°30′ N. latitude; (ii) Southern limit: 43°00′ N. latitude.

(3) *Eureka.* (i) Northern limit: 43°00 N. latitude; (ii) Southern limit: 40°30 N. latitude.

(4) *Monterey.* (i) Northern limit: 40°30′ N. latitude; (ii) Southern limit: 36°00′ N. latitude.

(5) *Conception.* (i) Northern limit: 36°00′ N. latitude; (ii) Southern limit: The United States-Mexico International Boundary, which is a line connecting the following coordinates in the order listed:

Point	N. latitude	W. longitude
1	32°35′22″	117°27′49″
2	32°37′37″	117°49′31″
3	31°07′58″	118°36′18″
4	30°32′31″	121°51′58″

(b) Any person fishing subject to this part is bound by the above-described international boundaries, nothwithstanding any dispute or negotiation between the United States and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are established or recognized by the United States.

(c) The inner boundary of the fishery management area is a line coterminous with the seaward boundaries of the States of Washington, Oregon, and California (the "3-mile limit").

(d) The outer boundary of the fishery management area is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the United States and Canada or Mexico.

[47 FR 43974, Oct. 5, 1982; 48 FR 13048, Mar. 29, 1983]

§ 663.6 Vessel identification.

(a) *Display.* The operator of a vessel which is over 25 feet in length and is engaged in commercial fishing for groundfish must display the vessel's official number on the port and starboard sides of the deckhouse or hull, and on a weather deck so as to be visible from above. The number must contrast with the background and be in block arabic numerals at least 18 inches high for vessels over 65 feet long and at least 10 inches high for vessels between 25 and 65 feet in length. The length of a vessel for purposes of this section is the length set forth in U.S. Coast Guard records or in State records if no U.S. Coast Guard record exists.

(b) *Maintenance of numbers.* The operator of a vessel engaged in commercial fishing for groundfish shall keep the identifying markings required by paragraph (a) of this section clearly legible and in good repair, and must ensure that no part of the vessel, its rigging, or its fishing gear obstructs the view of the official number from an enforcement vessel or aircraft.

(c) *Commercial passenger vessels.* This section does not apply to vessels carrying fishing parties on a per-capita basis or by charter.

[49 FR 27520, July 5, 1984]

§ 663.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Sell, offer to sell, or purchase any groundfish taken in the course of recreational groundfish fishing.

(b) Retain any species of salmonid or Pacific halibut caught by means of fishing gear authorized under this part unless authorized by 50 CFR Parts 301, 371 or 661.

(c) Falsify or fail to affix and maintain vessel and gear markings as required by § 663.6.

(d) Fish for groundfish in violation of any terms or conditions attached to an EFP under § 663.10.

(e) Fish for groundfish using gear not authorized under § 663.26, or under an EFP issued under § 663.10.

(f) Take and retain, or land more groundfish than specified under § 663.27, § 663.28, or under an EFP issued under § 663.10.

(g) Violate any other provision of this part, the Magnuson Act, any notice issued under subpart B of this part, or any other regulation or permit promulgated under the Magnuson Act.

(h) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, possession, landing, purchase, sale, or transfer of any fish.

(i) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search conducted in the process of enforcing the Magnuson Act.

[47 FR 43974, Oct. 5, 1982; 48 FR 13048, Mar. 29, 1983, as amended at 53 FR 22002, June 13, 1988; 53 FR 24658, June 29, 1988]

§ 663.8 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 663.9 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

§ 663.10 Experimental fisheries.

(a) *General.* The Secretary may authorize, for limited experimental purposes, the direct or incidental harvest of groundfish managed by the pacific Coast Groundfish Plan which would otherwise be prohibited by this part. No experimental fishing may be conducted unless authorized by an experimental fishing permit (EFP) issued by the Secretary in accordance with the criteria and procedures specified in this section. EFPs will be issued without charge.

(b) *Application.* An applicant for an EFP shall submit to the Regional Director at least 60 days before the desired effective date of the EFP a written application including, but not limited to, the following information:

(1) The date of the application;

(2) The applicant's name, mailing address, and telephone number;

(3) A statement of the purposes and goals of the experiment for which an EFP is needed, including a general description of the arrangements for disposition of all species harvested under the EFP;

(4) A statement of whether the proposed experimental fishing has broader significance than the applicant's individual goals;

(5) For each vessel to be covered by the EFP:

(i) Vessel name;

(ii) Name, address, and telephone number of owner and master;

(iii) U.S. Coast Guard documentation, State license, or registration number;

(iv) Home port;

(v) Length of vessel;

(vi) Net tonnage; and

(vii) Gross tonnage.

(6) A description of the species (directed and incidental) to be harvested under the EFP and the amount(s) of such harvest necessary to conduct the experiment;

(7) For each vessel covered by the EFP, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used; and

(8) The signature of the applicant.

The Secretary may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected in writing.

(Approval by Office of Management and Budget not required, under 44 U.S.C. 3506(c)(5)).

(c) *Issuance.* (1) If an application contains all of the required information, the Secretary will publish a notice of receipt of the application in the FEDERAL REGISTER with a brief description of the proposal, and will give interested persons an opportunity to comment. The Secretary will also forward copies of the application to the Pacific Fishery Management Council, the U.S. Coast Guard, and the fishery management agencies of Oregon, Washington, California, and Idaho, accompanied by the following information:

(i) The current utilization of domestic annual harvesting and processing capacity (including existing experimental harvesting, if any) of the directed and incidental species for which an EFP is being requested;

(ii) A citation of the regulation or regulations which, without the EFP, would prohibit the proposed activity; and

(iii) Biological information relevant to the proposal.

(2) At a Pacific Fishery Management Council meeting following receipt of a complete application, the Secretary will consult with the Pacific Fishery Management Council and the Directors of the State fishery management agencies concerning the permit appli-

cation. The applicant will be notified in advance of the meeting at which the application will be considered, and invited to appear in support of the application if the applicant desires.

(3) Within 5 working days after the consultation in paragraph (c)(2) of this section, or as soon as practicable thereafter, the Secretary shall notify the applicant in writing of the decision to grant or deny the EFP, and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(i) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application; or

(ii) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect any species of fish in a significant way; or

(iii) Issuance of the EFP would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose; or

(iv) Activities to be conducted under the EFP would be inconsistent with the intent of this section or the management objectives of the Pacific Coast Groundfish Plan; or

(v) The applicant has failed to demonstrate a valid justification for the permit; or

(vi) The activity proposed under the EFP would create a significant enforcement problem.

(4) The decision of the Secretary to grant or deny an EFP is final and unappealable. If the permit is granted, the Secretary will publish a notice in the FEDERAL REGISTER describing the experimental fishing to be conducted under the EFP. The Secretary may attach terms and conditions to the EFP consistent with the purpose of the experiment including, but not limited to:

(i) The maximum amount of each species which can be harvested and landed during the term of the EFP, including trip limits, where appropriate;

(ii) The number, sizes, names, and identification numbers of the vessels authorized to conduct fishing activities under the EFP;

(iii) The time(s) and place(s) where experimental fishing may be conducted;

(iv) The type, size, and amount of gear which may be used by each vessel operated under the EFP;

(v) The condition that observers be carried aboard vessels operated under an EFP;

(vi) Data reporting requirements; and

(vii) Such other conditions as may be necessary to assure compliance with the purposes of the EFP consistent with the objectives of the Pacific Coast Groundfish Plan.

(d) *Duration.* Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is effective for no longer than one year unless revoked, suspended, or modified. EFPs may be renewed following the application procedures in this section.

(e) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(f) *Transfer.* EFPs issued under this part are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.

(g) *Inspection.* Any EFP issued under this part must be carried aboard the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(h) *Sanctions.* Failure of the holder of an EFP to comply with the terms and conditions of an EFP, a notice issued under Subpart B of this part, any other applicable provision of this part, the Magnuson Act, or any other regulation promulgated thereunder, shall be grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP will be governed by 15 CFR Part 904 Subpart D, or 50 CFR Part 621.

[47 FR 43974, Oct. 5, 1982; 48 FR 13048, Mar. 29, 1983]

Subpart B—Management Measures

§ 663.21 General limitations.

(a) *Optimum yield.* (1) Numerical optimum yields (OYs) for Pacific whiting, sablefish, Pacific ocean perch, shortbelly rockfish, widow rockfish, and jack mackerel (north of 39°00′ N. latitude) in the regulatory subareas are published in the FEDERAL REGISTER. OYs for those six species are the maximum amount which may be retained or landed shoreside each year in the fishery management area or relevant subarea and include fish caught in the territorial sea (0-3 nautical miles). The "other species" complex has no numerical OY and is regulated by the gear, area, and catch restrictions set forth in this Subpart B.

(2) Pacific ocean perch are categorized as "other species" in the Eureka, Monterey, and Conception subareas. This species is not common or important in these subareas. Accordingly, the OY for Pacific ocean perch applies only to the Vancouver and Columbia subareas.

(b) *Notice of closure.* If the Secretary determines that the numerical OY for any species in the fishery management area or in any regulatory subarea will be reached during the fishing year, the Secretary will publish a notice of closure under the provisions of § 663.23, prohibiting retention or landing of that species caught in the fishery management area or in the applicable regulatory subarea.

[47 FR 43974, Oct. 5, 1982, as amended at 49 FR 27520, July 5, 1984; 52 FR 4911, Feb. 18, 1987]

§ 663.22 Inseason adjustments.

(a) *Reduction of fishing levels.* (1) Except as otherwise provided by Section 305(e) of the Magnuson Act, after receiving a recommendation and written report by the Pacific Fishery Management Council, the Secretary may publish one or more notices under § 663.23 to reduce fishing levels if it is determined that continued fishing at current levels would cause biological stress to any species or species complex. Biological stress may exist when:

(i) Exploitable biomass or spawning biomass is below a level expected to produce MSY for a species or species complex;

(ii) Recruitment is substantially below replacement level;

(iii) Fishing mortality rate exceeds that required to take ABC for the calendar year;

(iv) Catch for the calendar year is projected to exceed the best current estimate of ABC; or

(v) Any other abnormality in the biological characteristics of the species or species complex is discovered, such as changes in age composition, size composition, or age at maturity.

(2) A public hearing will be held before any determination that continued fishing at current levels would result in biological stress to any species or species complex, and before publishing any notice reducing fishing levels on any species or species complex.

(3) In issuing any notice reducing fishing levels under this paragraph, the Secretary may adjust the management measures in this part. Adjustments to management measures may include: size, trip, and bag limits; termination of directed and/or incidental harvest by foreign or domestic fishermen, or both, of a species or species complex; area and subarea closures; time closures; gear limitations; and quotas. To the extent practicable, adjustments to management measures will be consistent with the objectives and priorities of the Pacific Coast Groundfish Plan.

(b) *Increase in numerical OYs.* (1) After receiving a recommendation and written report from the Pacific Fishery Management Council, the Secretary may publish one or more notices under § 663.23 to increase the numerical OY for any species during the fishing year, if it is determined that such increase would not cause biological stress to that or any other species and would promote full utilization of the groundfish resource. The Secretary will consider the following in making the determination:

(i) Exploitable biomass and spawning biomass relative to MSY levels for the species under consideration;

(ii) Fishing mortality rate relative to MSY levels for the species under consideration;

(iii) Magnitude of incoming recruitment;

(iv) Projected effort and corresponding catches relative to ABC;

(v) In the case of species normally taken in mixed catches, the relative contribution of the species to the total catch;

(vi) The impact, if any, of the proposed increase in OY on other species.

(2) A public hearing will be held before any determination is made which forms the basis for an increase to a numerical OY and before the Secretary publishes any notice to implement such increase.

(3) The sum of any increases to a numerical OY during a single fishing year may not exceed 30 percent of the OY for that species at the beginning of the fishing year.

(c) *Modifications to catch restriction for Pacific ocean perch.* (1) Catch restrictions applicable to Pacific ocean perch are specified at § 663.27(b)(2). After receiving a recommendation and written report from the Pacific Fishery Management Council, the Secretary may publish one or more notices under § 663.23 to modify these catch restrictions if it is determined that such modification is necessary to achieve the OY based on the 20-year rebuilding schedule.

(2) A public hearing will be held before any determination is made that modification of catch restrictions applicable to Pacific ocean perch is necessary to achieve OY, and before the Secretary publishes any notice to implement such modification.

[47 FR 43974, Oct. 5, 1982; 48 FR 13048, Mar. 29, 1983, as amended at 49 FR 27520, July 5, 1984]

§ 663.23 Notices.

(a) The Secretary shall publish the notices described in § 663.21, § 663.22 § 663.25 or § 663.27 in proposed form in the FEDERAL REGISTER for public comment, unless the Secretary finds for good cause that such notice and public review are impracticable, unnecessary, or contrary to the public interest. During the public comment period, the aggregate data upon which the proposed notice is based will be available for public inspection at the Regional Office during business hours.

(b) If the Secretary determines, for good cause, that a notice described in § 663.21, § 663.22, § 663.25, or § 663.27(b)(3) must be issued without affording a prior opportunity for public comment, public comments on the notice shall be received by the Secretary for a period of 15 days after the effective date of the notice. During any such 15-day period, the aggregate data upon which the notice was based will be available for public inspection in the office of the Regional Director during business hours.

(c) Any notice issued under this section will not be effective until 30 days after publication in the FEDERAL REGISTER unless the Secretary finds and publishes with the notice good cause for an earlier effective date.

(d) Notices issued under this section will remain in effect until the expiration date stated in the published notice or until rescinded, modified, or superseded.

(e) Nothing contained in this section limits the authority of the Secretary to issue emergency regulations under Section 305(e) of the Magnuson Act.

[47 FR 43974, Oct. 5, 1982; 48 FR 13048, Mar. 29, 1983, as amended at 52 FR 4911, Feb. 18, 1987]

§ 663.24 Annual adjustments.

(a) Each year, the Secretary will publish a notice in the FEDERAL REGISTER specifying optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable level of foreign fishing (TALFF) for Pacific whiting, sablefish, Pacific ocean perch, shortbelly rockfish, widow rockfish, and jack mackerel (north of 39°00′ N. latitude). The Secretary may publish season and area restrictions, incidental catch and receipt allowance restrictions, and any other restrictions, for any TALFF or JVP amount that may be specified for species other than Pacific whiting. The Secretary also will publish the annual ABCs for groundfish in the FEDERAL REGISTER. Annual specifications of numerical OYs and ABCs by the Secretary will not exceed by more than 30 percent the OYs and ABCs specified at the beginning of the previous fishing year.

(b) *Procedures*—(1) *Preliminary specifications.* On November 1, or as soon as practicable thereafter, the Secretary will make and publish in the FEDERAL REGISTER preliminary specifications for the next calendar year as described in paragraph (a) of this section. The Secretary will consult with the Pacific Fishery Management Council and consider the following factors in making the preliminary specifications:

(i) Results of a survey of domestic processors and joint venture operations to estimate processing capacity and planned utilization;

(ii) Results of a survery of fishermen's trade associations to estimate fishing capacity and planned utilization; and

(iii) Relevant scientific information.

(2) *Final specifications.* On December 1, or as soon as practicable thereafter, the Secretary will make final specifications for the next calendar year as described in paragraph (a) of this section. The Secretary will consult with the Pacific Fishery Management Council and take into consideration all information received under paragraph (b)(4) of this section, all factors considered in making the preliminary determinations under paragraph (b)(1) of this section, and additional relevant information. The final specifications will be published as a notice in the FEDERAL REGISTER on or about December 1 with the reason for the specifications.

(3) *Availability of data.* All data relevant to the preliminary and final specifications under paragraphs (b)(1) and (b)(2) of this section will be compiled in aggregate form and will be available for public review at the office of the Regional Director during the public comment period.

(4) *Public comment.* Comments from the public that are relevant to the preliminary and final specifications in paragraphs (b)(1) and (b)(2) of this section may be submitted to the Secretary until December 1 or as specified in the FEDERAL REGISTER.

[47 FR 43974, Oct. 5, 1982; 48 FR 13048, Mar. 29, 1983, as amended at 49 FR 27520, July 5, 1984]

§ 663.25 Gear adjustments.

(a) *Changes to gear restrictions.* Except as otherwise provided by section 305(e) of the Magnuson Act, after receiving a recommendation and written report by the Pacific Fishery Management Council, the Secretary may publish one or more notices under § 663.23 at any time during the year to change domestic or foreign gear restrictions if it is determined that the change is consistent with the objectives of the FMP and would result in significant improvements in the groundfish fishery. Significant improvements may exist when:

(1) Sustainable landings are increased;

(2) The value of landings are increased;

(3) Gear conflicts are reduced;

(4) Fishing efficiency is increased; and

(5) Another condition exists which promotes achievement of the objectives of the FMP, which may be based on consideration of changes in catch composition, yield per recruit, cost to the fishing industry, impacts on other management measures and other fisheries, and any other relevent biological or socio-economic information.

(b) Changes to gear restrictions may include, but are not limited to, definitions of legal gear, mesh size specifications, codend specifications, marking requirements, and other gear specifications included in this part, 50 CFR 611.70, and the FMP.

(c) A public hearing will be held before any determination that a change to the gear restrictions is consistent with the objectives of the FMP and would result in significant improvements in the groundfish fishery, and before publishing any notice changing gear restrictions. Implementation of changes to the gear restrictions will be scheduled so as to minimize the costs to the fishing industry, insofar as this is consistent with achieving the goals of the change.

[52 FR 4911, Feb. 18, 1987]

§ 663.26 Gear restrictions.

(a) *General.* The following types of fishing gear are authorized, with the restrictions set forth in this section:

bottom trawl, hook-and-line, longline, pelagic trawl, pot or trap, roller or bobbin trawl, set net, spear, trammel net, and trawl net.

(b) *Trawl gear*—(1) *Use.* Trawl nets may be used on and off the seabed. Trawl nets may be fished with or without otter boards, and may use warps or cables to herd fish.

(2) *Mesh size.* Trawl nets may be used if they meet the minimum sizes set forth below. The minimum sizes apply to the last fifty meshes running the length of the net to the terminal (closed) end of the codend. Minimum trawl mesh size requirements are met if a 20-gauge stainless steel wedge, 3.0 or 4.5 inches (depending on the gear being measured) less one thickness of the metal at the widest part, can be passed with thumb pressure only through 16 of 20 sets of two meshes each of wet mesh in the codend.

MINIMUM TRAWL MESH SIZE (IN INCHES)

Trawl type	Subarea				
	Vancouver	Columbia	Eureka	Monterey	Conception
Bottom	4.5	4.5	4.5	4.5	4.5
Roller or bobbin	3.0	3.0	3.0	4.5	4.5
Pelagic	3.0	3.0	3.0	3.0	3.0

(3) *Chafing gear.* (i) Chafing gear must not be connected directly to the terminal (closed) end of the codend.

(ii) In all bottom trawls, chafing gear must have a minumum mesh size of 15 inches, unless only the bottom one-half (underside) of the codend is covered by chafing gear.

(iii) In roller and bobbin trawls in the Vancouver, Columbia, and Eureka subareas, and all pelagic trawls, chafing gear covering the upper one-half (top side) of the codend must have a minimum mesh size of 6 inches.

(4) *Double-walled codends.* (i) Double-walled codends must not be used in any pelagic trawl, or in any other trawl with mesh size less than 4.5 inches.

(ii) The double-walled layers of the codend must be the same mesh size and coincide knot-to-knot, and must not be longer than 25 trawl meshes or 12 feet, whichever is greater.

(5) *Bottom trawls.* A net used in a bottom trawl must have at least two continuous riblines sewn to the net and extending from the mouth of the trawl net to the terminal end of the codend, if the fishing vessel is simultaneously carrying aboard a net of less than 4.5 inch mesh size.

(6) *Pelagic trawls.* Pelagic trawl nets must have unprotected footropes at the trawl mouth (without rollers or bobbins). Sweeplines, including the bottom leg of the bridle, must be bare.

(7) *Roller trawl or bobbin trawl.* In the Eureka, Columbia, and Vancouver subareas, if trawl mesh size less than 4.5 inches is used—

(A) Rollers or bobbins must be at least 14 inches in diameter and free to rotate, with at least two rollers or bobbins equally spaced on each side of the footrope within 10 feet of the center of the footrope of the net; and

(B) Continuous chain, rope, or cable (commonly known as a "tickler chain") which contacts the sea floor ahead of the rollers may not be used with a roller or bobbin trawl.

(c) *Set nets.* (1) Fishing for groundfish with set nets is prohibited in the fishery management area north of 38°00′ N. latitude.

(2) Set nets must be marked at the surface at each terminal end with a pole and flag, light, radar reflector, and a buoy displaying clear identification of the owner.

(d) *Traps or pots.* (1) Traps must be attended at least once every seven days.

(2) Traps must have biodegradable escape panels constructed with #21 or smaller untreated cotton twine in such a manner that an opening at least 8 inches in diameter results when the twine deteriorates.

(3) Traps set individually must be marked at the surface with a pole and flag, light, radar reflector, and a buoy displaying clear identification of the owner.

(4) Traps laid on a groundline must be marked at the surface at each terminal end with a pole and flag, light, radar reflector, and a buoy displaying clear identification of the owner.

(e) *Spears.* Spears may be propelled by hand or by mechanical means.

(f) *Longlines.* (1) Longlines must be attended at least once every 7 days.

(2) Longlines must be marked at the surface at each terminal end with a pole and flag, light, radar reflector, and a buoy displaying clear identification of the owner.

(g) *Commercial vertical hook-and-line (Portuguese longline).* Commercial vertical hook-and-line gear (Portuguese longline) must be marked at the surface with a pole and flag, light, radar reflector, and a buoy displaying clear identification of the owner.

(h) *Recreational fishing.* The only types of fishing gear authorized for recreational fishing are hook-and-line and spear.

[47 FR 43974, Oct. 5, 1982; 48 FR 13048, Mar. 29, 1983, as amended at 49 FR 11640, Mar. 27, 1984; 49 FR 27520, July 5, 1984; 50 FR 26213, June 25, 1985; 52 FR 4911, Feb. 18, 1987]

§ 663.27 Catch restrictions.

Groundfish species harvested in the territorial sea (0-3 nautical miles) will be counted toward the catch limitations in this section.

(a) *Recreational fishing.* The limits for each person engaged in recreational fishing are three lingcod per day and 15 rockfish per day. Multi-day limits are authorized by a valid permit issued by the State of California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(b) *Commercial fishing*—(1) *Rockfish.* The trip limit for a vessel engaged in fishing with a pelagic trawl with mesh size less than 4.5 inches in the Conception or Monterey subareas is 500 pounds or 5 percent by weight of all fish on board, whichever is greater, of the species group composed of bocaccio, chilipepper, splitnose, and yellowtail rockfishes per fishing trip.

(2) *Pacific ocean perch.* The trip limit for Pacific ocean perch is 5,000 pounds or 10 percent by weight of all fish on board, whichever is greater, per vessel per fishing trip, except as modified under § 663.22(c).

(3) *Sablefish.* When it is determined that 90 percent of the OY will be reached, the Secretary will publish a notice in accordance with § 663.23 dividing the 10 percent balance of OY equally (5 percent apiece) between trawl gear and fixed gear, and establishing a percentage trip limit for trawl gear. The trip limit will be based on the most recent data available for the season and will equal the average percentage of sablefish in all trawl landings containing sablefish from the fishery management area, but in no event will the trip limit exceed 30 percent by weight of all fish on board. If the Secretary determines that either trawl or fixed gear will take its 5 percent balance of OY, the Secretary will publish a notice of closure under § 663.23 prohibiting retention and landing of sablefish taken by that gear type in the fishery management area. The provisions at § 663.21(b) prohibiting landings when OY is reached will apply even if fixed or trawl gear has not landed its 5 percent balance of OY.

[47 FR 43974, Oct. 5, 1982; 48 FR 13048, Mar. 29, 1983, as amended at 49 FR 27520, July 5, 1984; 52 FR 4911, Feb. 18, 1987]

§ 663.28 Restrictions on other fisheries.

(a) *Pink shrimp.* The trip limit for a vessel engaged in fishing for pink shrimp is 1,500 pounds (multiplied by the number of days of the fishing trip) of groundfish species other than Pacific whiting, shortbelly rockfish, or arrowtooth flounder.

(b) *Spot and ridgeback prawns.* The trip limit for a vessel engaged in fishing for spot or ridgeback prawns is 1,000 pounds of groundfish species per fishing trip.

§ 663.29 Scientific research.

Nothing is this part is intended to inhibit or prevent any scientific research which is conducted in the fishery management area by a scientific research vessel. The Secretary will acknowledge notification of scientific research involving groundfish and conducted by a scientific research vessel by issuing to the operator or master of that vessel a letter of acknowledgement, containing information on the purpose and scope (locations and schedules) of the activities. The Secretary will transmit copies of such letters to the Pacific Fishery Management Council, and to State and Federal administrative and enforcement agencies, to ensure that all concerned parties are aware of the research activities.

PART 669—SHALLOW-WATER REEF FISH FISHERY OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

Subpart A—General Provisions

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AUTHORITY: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 669.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Shallow-water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands prepared by the Caribbean Fishery Management Council under the Magnuson Act.

(b) This part regulates fishing for shallow-water reef fish within the Atlantic Ocean and Caribbean Sea portions of the EEZ adjacent to the State waters of Puerto Rico and the U.S. Virgin Islands.

[50 FR 34851, Aug. 28, 1985, as amended at 53 FR 24658, June 29, 1988]

§ 669.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Fish in the shallow-water reef fish fishery means any of the following species:

Squirrelfishes—Holocentridae

Squirrelfish, *Holocentrus ascensionis*
Longspine squirrelfish, *Holocentrus rufus*

Groupers—Serranidae

Rock hind, *Epinephelus adscensionis*
Graysby, *Epinephelus cruentatus*
Coney, *Epinephelus fulvus*
Red hind, *Epinephelus guttatus*
Jewfish, *Epinephelus itajara*
Nassau grouper, *Epinephelus striatus*
Yellowfin grouper, *Mycteroperca venenosa*

Jacks—Carangidae

Yellow Jack, *Caranx bartholomaei*
Blue runner, *Caranx crysos*
Horse-eye jack, *Caranx latus*
Black jack, *Caranx lugubris*
Bar jack, *Caranx ruber*

Snappers—Lutjanidae

Mutton snapper, *Lutjanus analis*
Schoolmaster, *Lutjanus apodus*
Mangrove snapper, *Lutjanus griseus*
Dog snapper, *Lutjanus jocu*
Mahogany snapper, *Lutjanus mahogani*
Lane snapper, *Lutjanus synagris*
Yellowtail snapper, *Ocyurus chrysurus*

Grunts—Haemulidae

Margate, *Haemulon album*
Tomtate, *Haemulon aurolineatum*
French grunt, *Haemulon flavolineatum*
White grunt, *Haemulon plumieri*
Bluestriped grunt, *Haemulon sciurus*

Porgies—Sparidae

Sea bream, *Archosargus rhomboidalis*
Jolthead porgy, *Calamus bajonado*
Sheepshead porgy, *Calamus penna*
Pluma, *Calamus pennatula*

Goatfishes—Mullidae

Yellow goatfish, *Mulloidichthys martinicus*
Spotted goatfish, *Pseudupeneus maculatus*

Butterflyfishes—Chaetodontidae

Foureye butterflyfish, *Chaetodon capistratus*
Spotfin butterflyfish, *Chaetodon ocellatus*
Banded butterflyfish, *Chaetodon striatus*

Angelfishes—Pomacanthidae

Queen angelfish, *Holacanthus ciliaris*
Rock beauty, *Holacanthus tricolor*
Gray angelfish, *Pomacanthus arcuatus*
French angelfish, *Pomacanthus paru*

Wrasses—Labridae

Spanish hogfish, *Bodianus rufus*
Puddingwife, *Halichoeres radiatus*
Pearly razorfish, *Hemipteronotus novacula*
Hogfish, *Lachnolaimus maximus*

Parrotfishes—Scaridae

Midnight parrotfish, *Scarus coelestinus*
Blue parrotfish, *Scarus coeruleus*
Striped parrotfish, *Scarus croicensis*
Rainbow parrotfish, *Scarus guacamaia*
Princess parrotfish, *Scarus taeniopterus*
Queen parrotfish, *Scarus vetula*
Redband parrotfish, *Sparisoma aurofrenatum*
Redtail parrotfish, *Sparisoma chrysopterum*
Stoplight parrotfish, *Sparisoma viride*

Surgeonfishes—Acanthruidae

Ocean surgeonfish, *Acanthurus bahianus*
Doctorfish, *Acanthurus chirurgus*
Blue tang, *Acanthurus coeruleus*

Leatherjackets—Balistidae

Queen triggerfish, *Balistes vetula*
Ocean triggerfish, *Canthidermis sufflamen*
Black durgon, *Melichthys niger*
Sargassum triggerfish, *Xanthichthys ringens*

Boxfishes—Ostraciidae

Spotted truckfish, *Lactophrys bicaudalis*
Honeycomb cowfish, *Lactophrys polygonia*
Scrawled cowfish, *Lactophrys quadricornis*
Trunkfish, *Lactophrys trigonus*
Smooth trunkfish, *Lactophrys triqueter*

Fish trap or *trap* means any trap and the component parts (including the lines and buoys) thereof used for taking finfish, regardless of the construction material.

Regional Director means the Regional Director, or a designee, Southeast Region, National Marine Fisheries Service, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702; telephone 813-893-3141.

Total length means the greatest possible length of a fish with the mouth of the fish closed and the caudal fin (tail) squeezed together to give the greatest over-all measurement (Figure 1).

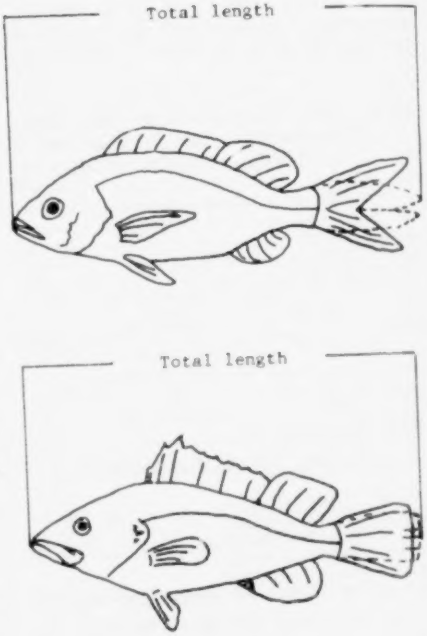

Figure 1. Measurement of total length for fishes with a forked tail, yellowtail snapper (top) and with a rounded tail, Nassau grouper (bottom).

[50 FR 34851, Aug. 28, 1985, as amended at 53 FR 24655, June 29, 1988]

§ 669.3 Relationship to other laws.

The relation of this part to other laws is set forth in § 620.3 of this chapter.

[53 FR 24655, June 29, 1988]

§ 669.4 Permits.

No permits are required for fishing vessels engaged in the shallow-water reef fish fishery within the EEZ (see vessel and gear identification requirements in § 669.6).

[50 FR 34851, Aug. 28, 1985, as amended at 53 FR 24660, June 29, 1988]

§ 669.5 Recordkeeping and reporting. [Reserved]

[53 FR 24656, June 29, 1988]

§ 669.6 Vessel and gear identification.

(a) *Applicability.* A vessel in the commercial shallow-water reef fish fishery fishing with traps in the EEZ must obtain an identification number and color code issued by the Regional Director unless the vessel possesses a valid identification number and color code issued by the Government of Puerto Rico or the Government of the U.S. Virgin Islands.

(b) *Application to the Regional Director.* (1) An application for an identification number and color code must be submitted to the Regional Director 45 days prior to the date on which the applicant desires receipt.

(2) Each application must contain the following information:

(i) The applicant's name, mailing address, and telephone number;

(ii) The name and length of the vessel;

(iii) The vessel's official number; and

(iv) The vessel's radio call sign.

(c) *Vessel identification.* Each fishing vessel must display the identification number and color code issued to the vessel by the Regional Director or State on the port and starboard sides of the deckhouse or hull. In addition, each vessel over 25 feet long must display its identification number and color code on an appropriate weather deck. All identification numbers and color codes must be displayed permanently and conspicuously so as to be readily identifiable from the air and water. The number must contrast with the background and be in block Arabic numerals at least 18 inches high for vessels over 65 feet long, as least 10 inches high for vessels over 25 feet long, and at least 3 inches high for vessels 25 feet long or less. The color code representation must be in the form of a circle not less than 18 inches in diameter or a strip not less than 18 inches high and 18 inches long for vessels over 65 feet long; a circle not less than 10 inches in diameter or a strip not less than 10 inches high and 18 inches long for vessels over 25 feet long; and a circle not less than 3 inches in diameter or a strip not less than 3 inches high and 10 inches long for vessels 25 feet long or less.

(d) *Duties of operator.* The operator of each fishing vessel subject to this part must:

(1) Keep the identification number and color code clearly legible and in good repair.

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or anything else aboard obstructs the view of the identification number and color code from an enforcement vessel or aircraft.

(e) *Gear identification.* (1) All traps and buoys used in the shallow-water reef fish fishery must be marked and identified as follows:

(i) Buoys affixed to traps must bear the number and color code specified for the vessel. The identification number must be legible and at least 3 inches high on each buoy.

(ii) Traps must bear the number specified for the vessel. The number must be legible and at least 3 inches high, or as high as the widest available space if such space is less than 3 inches wide. As an alternative, the number may be stamped on a plate of non-corrosive metal or plastic and securely affixed to the trap.

(2) Traps and buoys for shallow-water reef fish fished in the EEZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to shallow-water reef fish traps which are lost or sold if the owner of such traps reports in writing the loss or sale within 15 days to the Regional Director. The report must specify the number of traps lost or sold, the color code and the identification number.

(3) Unmarked shallow-water reef fish traps deployed in the EEZ at any time are illegal gear and may be disposed of in any appropriate manner by the Secretary or an authorized officer. Lines and buoys are considered part of the trap. If owners of the unmarked traps can be ascertained, those owners remain subject to appropriate civil penalties.

[50 FR 34851, Aug. 28, 1985, as amended at 53 FR 24660, June 29, 1988]

§ 669.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish with traps for shallow-water reef fish in the EEZ without an identification number and color code as required by § 669.6.

(b) Falsify or fail to affix and maintain gear and vessel markings as required by § 669.6.

(c) Possess in, or harvest from the EEZ Nassau grouper during the closed fishing season specified in § 669.21.

(d) Tend, open, pull, or otherwise molest or have in one's possession aboard a fishing vessel another person's fish traps except as provided in § 669.22.

(e) Possess in, or harvest from the EEZ yellowtail snapper less than the minimum size limit specified in § 669.23(a).

(f) Possess in, or harvest from the EEZ Nassau grouper less than the minimum size limit specified in § 669.23(b).

(g) Possess in the EEZ or land any shallow-water reef fish harvested in the EEZ without head and fins intact as specified in § 669.23(d).

(h) Possess or use fish traps in the EEZ with a mesh size smaller than the size limit specified under §669.24(a)(1).

(i) Possess, or use fish traps in the EEZ without a degradable panel or degradable door fastening as specified in § 669.24(a) (2) and (3).

(j) Fish for shallow-water reef fish in the EEZ with explosives, including powerheads, as specified in § 669.24(b)(1).

(k) Fish for shallow-water reef fish in the EEZ with drugs, poisons or other chemicals as specified in § 669.24(b)(2).

(l) Interfere with, delay, obstruct or prevent by any means a lawful investigation or search in the process of enforcing this part.

[50 FR 34851, Aug. 28, 1985, as amended at 53 FR 24658, June 29, 1988]

§ 669.8 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 669.9 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

Subpart B—Management Measures

SOURCE: 50 FR 34851, Aug. 28, 1985, unless otherwise noted.

§ 669.20 Fishing year.

The fishing year for the shallow-water reef fish fishery begins on January 1 and ends on December 31.

§ 669.21 Closed seasons.

The fishing season for Nassau grouper in the EEZ is closed from 0001 hours January 1 through 2400 hours March 31. Nassau grouper taken during this period must be returned to the sea immediately with a minimum amount of harm.

[50 FR 34851, Aug. 28, 1985, as amended at 53 FR 24660, June 29, 1988]

§ 669.22 Harvest limitations.

Fish traps may be tended or pulled only by persons (other than authorized officers) aboard the fish trap owner's vessel(s), or aboard another vessel if such vessel has onboard written consent of the fish trap owner, or if the fish trap owner is aboard and has documentation verifying the identification number and color code. Owner's letter of consent must specify effective time period, and trap owner's vessel identification number and color code.

§ 669.23 Size limitations.

(a) The minimum size limit for the harvest or possession of yellowtail snapper in the EEZ is 8 inches total length. Effective September 22, 1986, the minimum size of yellowtail snapper will be increased to 9 inches. On each September 22 the minimum size will be increased one inch until reaching a minimum size of 12 inches total length on September 22, 1989.

(b) The minimum size limit for the harvest or possession of Nassau grouper in the EEZ is 12 inches total length. Effective September 22, 1986, the minimum size of Nassau grouper will be increased to 13 inches. On each September 22 the minimum size will be increased one inch until reaching a minimum size of 24 inches total length on September 22, 1997.

(c) Undersized yellowtail snapper and Nassau grouper must be returned to the water immediately and with minimum harm.

(d) All shallow-water reef fish harvested in the EEZ and subject to minimum size limits specified in this section must be landed with the head, fins, and tail intact.

[50 FR 34851, Aug. 28, 1985, as amended at 53 FR 24660, June 29, 1988]

§ 669.24 Gear limitations.

(a)(1) Effective September 22, 1986, fish traps must have a minimum mesh size of 1¼ inches in the smallest dimension of the mesh opening.

(2) Fish traps must have on the sides or top, a degradable panel or degradable door fastening made of any material listed in paragraph (a)(3) of this section. The panel and door opening must not be smaller than either of the entry ports or funnel opening of the trap.

(3) Degradable material must be untreated fiber of biological origin, not more than three millimeters (approximately ⅛") maximum diameter, including but not limited to tyre palm, hemp, jute, cotton, wool, or silk, or non-galvanized black iron wire not more than 1.59 millimeters (approximately one-sixteenth inch) in diameter; that is, 16 gauge wire.

(b)(1) Explosives, including powerheads, may not be used to fish for shallow-water reef fish in the EEZ.

(2) Poisons, drugs, and other chemicals may not be used to fish for shallow-water reef fish in the EEZ.

[50 FR 34851, Aug. 28, 1985, as amended at 53 FR 24660, June 29, 1988]

§ 669.25 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities which are otherwise prohibited by these regulations.

PART 672—GROUNDFISH OF THE GULF OF ALASKA

Subpart A—General

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Subpart B—Management Measures

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672.26 [Reserved]
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AUTHORITY: 16 U.S.C. 1801 *et seq.*.

SOURCE: 45 FR 73487, Nov. 5, 1980, unless otherwise noted.

Subpart A—General

§ 672.1 Purpose and scope.

(a) Regulations in this part govern fishing for groundfish by vessels of the United States within that portion of the Gulf of Alaska over which the United States exercises exclusive fishery management authority.

(b) For regulations governing fishing in the Gulf of Alaska groundfish fishery by fishing vessels other than vessels of the United States, see 50 CFR 611.92.

(c) These regulations implement the Gulf of Alaska groundfish fishery management plan developed by the North Pacific Fishery Management Council.

§ 672.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

ADF&G means the Alaska Department of Fish and Game.

Bottom trawl means a trawl in which the ground rope of the net is equipped with bobbins or roller gear.

Directed fishing, with respect to any species, stock or other aggregation of fish, means fishing that is intended or can reasonably be expected to result in the catching, taking, or harvesting of quantities of such fish that amount to 20 percent or more of the catch, take, or harvest, or to 20 percent or more of the total amount of fish or fish products on board at any time. It will be a rebuttable presumption that, when any species, stock, or other aggregation of fish comprises 20 percent or more of the catch, take, or harvest, or 20 percent or more of the total amount of fish or fish products on board at any time, such fishing was directed to fishing for such fish.

Groundfish means pollock, cod, any species of flounder and sole, Pacific ocean perch, thornyhead rockfish, other rockfish, sablefish, Atka mackerel, squid, and other finfish, except salmon, steelhead trout, and Pacific halibut. The scientific names of these species are as follows:

Pollock means *Theragra chalcogramma.*
Cod means *Gadus macrocephalus.*
Arrowtooth flounder means *Atheresthes stomias.*
Other flounder means Pleuronectiformes (order) not specifically defined.
Rock sole means *Lepidopsetta bilineata.*
Flathead sole means *Hippoglossoides elassodon.*
Pacific ocean perch means *Sebastes alutus.*
Atka mackerel means *Pleurogrammus monopterygius.*
Sablefish means *Anoplopoma fimbria.*
Squid means sepioid and teuthoid squid.
Salmon means of the family Salmonidae.
Pacific halibut means *Hippoglossus styenolepis.*
Steelhead trout means *Salmo gairdneri.*
Rattail means Coryphaenoides not specifically defined.
Thornyhead rockfish, not specifically defined, means rockfish of the genus *Sebastolobus.*
Other rockfish means all fish of the genus *Sebastes* except Pacific ocean perch and *S. polyspinus, S. aleutianus, S. borealis,* and *S. zacentrus.*

Gulf of Alaska means that portion of the fishery conservation zone in the North Pacific Ocean exclusive of the Bering Sea, between 132°40′ W. longitude and 170°00′ W. longitude seaward of the State of Alaska.

Landing means off-loading fish.

Longline means a stationary, buoyed, and anchored line with hooks or pots attached, or the taking of fish by means of such a device.

Net-sonde device means a sensor used to determine the depth from the water surface at which a fishing net is operating.

Off-bottom trawl means a trawl in which the otter boards may be in contact with the seabed but the ground rope of the net remains above the seabed.

Pelagic trawl means a trawl on which neither the net nor the trawl doors (or other trawl-spreading device) operates in contact with the seabed, and which does not have attached to it any protective device (such as chafing gear, rollers, or bobbins) that would make it suitable for fishing in contact with the seabed.

Processing, or *to process*, means the preparation of fish to render it suitable for human consumption, industrial uses, or long-term storage, including but not limited to cooking, canning, smoking, salting, drying, freezing, and rendering into meal or oil, but does not mean heading and gutting unless additional preparation is done.

Regional Director means Director, Alaska Region, National Marine Fisheries Service.

Regulatory area means any of three areas of the EEZ of the Gulf of Alaska seaward of the State of Alaska. The three regulatory areas are described as follows:

Area and Location

Eastern, between 132°40′ and 147°00′ W. longitude.
Central, between 147°00′ and 159°00′ W. longitude.
Western, between 159°00′ and 170°00′ W. longitude.

Regulatory district means any of four districts of the Eastern Regulatory area as follows:

(1) Central Southeast Outside district—all waters of the EEZ between 56°00′ N. latitude and 57°30′ N. latitude and east of 137°00′ W. longitude;

(2) Southeast Inside district—all waters of the territorial sea (shoreward of three miles) east of 137°00′ W. longitude and north of 54°30′ W. longitude;

(3) Southeast Outside district—all waters of the EEZ east of 137°00′ W. longitude;

(4) East Yakutat district—all waters between 137°00′ W. longitude and 140°00′ W. longitude; and

(5) West Yakutat district—all waters between 140°00′ W. longitude and 147°00′ W. longitude.

Trawl means a funnel-shaped net that is towed through the water for catching fish or other organisms. The net accumulates its catch in the closed, small end (usually called the cod end). This definition includes, but is not limited to, Danish and Scottish seines and otter trawls.

[45 FR 73487, Nov. 5, 1981, as amended at 48 FR 43049, Sept. 21, 1983; 49 FR 48050, Dec. 10, 1984; 50 FR 43200, Oct. 24, 1985; 52 FR 7872, Mar. 13, 1987; 53 FR 24655, 24660, June 29, 1988]

§ 672.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) For regulations governing foreign fishing for groundfish in the Gulf of Alaska, see 50 CFR 611.92; for those governing foreign fishing for groundfish in the Bering Sea and Aleutian Islands, see 50 CFR 611.93. For regulations governing fishing for groundfish in the Bering Sea and Aleutian Islands by vessels of the United States, see 50 CFR 675; for those governing salmon fishing off Alaska, see 50 CFR Part 674; for those governing permits and certificates of inclusion for the taking of marine mammals, see 50 CFR 216.24. For regulations governing fishing for Pacific halibut by vessels of the United States, see the regulations of the International Pacific Halibut Commission at 50 CFR Part 301.

[53 FR 7759, Mar. 10, 1988 and 53 FR 24658, June 29, 1988]

§ 672.4 Permits.

(a) *General.* No vessel of the United States may fish for groundfish in the Gulf of Alaska without first obtaining a permit issued under this part. Permits shall be issued without charge.

(b) *Application.* The vessel permit required under paragraph (a) of this section may be obtained by submitting to the Regional Director a written application containing the following information:

(1) The vessel owner's name, mailing address, and telephone number;

(2) The name of the vessel;

(3) The vessel's U.S. Coast Guard documentation number or State registration number;

(4) The home port of the vessel;

(5) The type of fishing gear to be used;

(6) The length and net tonnage of the vessel;

(7) The hull color of the vessel;

(8) The names of all operators and/or lessees of the vessel;

(9) Whether the vessel is to be used in fish harvesting, in which case the type of fishing gear to be used must be specified; or for support operations, including the receipt of fish from U.S. vessels at sea; and

(10) The signature of the applicant.

(c) *Issuance.* (1) Except as provided in Subpart D of 15 CFR Part 904, upon receipt of a properly completed application, the Regional Director will issue a permit.

(2) Upon receipt of an incomplete or improperly completed application, the Regional Director shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 10 days following the date of notification, the application shall be considered abandoned.

(d) *Notification of change.* (1) Except as provided in paragraph (d)(2) of this section, any person who has applied for and received a permit under this section must give written notification of any change in the information provided under paragraph (b) of this section to the Regional Director within 30 days of the date of that change.

(2) A permit issued under this section will authorize either harvesting or support operations, but not both. The notification to the Regional Director under paragraph (d)(1) of this section of a change in the type of operations in which that vessel is to engage must be completed before that vessel begins the new type of operation.

(e) *Duration.* A permit will continue in full force and effect through December 31 of the year for which it was issued, or until it is revoked, suspended, or modified under Part 621 (Civil Procedures) of this chapter.

(f) *Alteration.* No person shall alter, erase, or mutilate any permit. Any permit that has been intentionally altered, erased, or mutilated shall be invalid.

(g) *Transfer.* Permits issued under this part are not transferable or assignable. A permit shall be valid only for the vessel for which it is issued.

(h) *Inspection.* Any permit issued under this part must be carried abroad the vessel whenever the vessel is fishing for groundfish. The permit shall be presented for inspection upon request of any authorized officer.

(i) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

[45 FR 73487, Nov. 5, 1981, as amended at 49 FR 1044, Jan. 6, 1984; 50 FR 43200, Oct. 24, 1985]

§ 672.5 Recordkeeping and reporting.

(a) *Catcher vesssels.* (1) The operator of any fishing vessel (including any catcher/processor vessel) to which a permit has been issued under § 672.4 of this part, that catches groundfish in any of the Gulf of Alaska regulatory areas, the territorial sea adjacent to any regulatory area, or internal waters of the State of Alaska, shall be responsible for the submission to ADF&G of an accurately completed State of Alaska fish ticket or an equivalent document containing all of the information required on an Alaska fish ticket. Fish tickets are not required for groundfish sold or delivered to a foreign processing vessel which has a permit under § 611.3 of this title.

(i) *When to submit fish tickets*—(A) *Sales or deliveries to shore.* Except as provided by paragraph (a)(1)(ii) of this section, the operator of any fishing vessel who sells or delivers his catch of groundfish to shore must submit the fish ticket required under paragraph (a)(1) of this section within one week after such fish are sold or delivered.

(B) *Sales or deliveries to vessels.* Except as provided by paragraph (a)(1)(ii) of this section, the operator of any fishing vessel who sells or delivers his catch of groundfish to another vessel must submit the fish ticket required under (a)(1) of this section within one week after he returns to port.

(ii) At the election of the fishing vessel operator who catches groundfish, fish tickets may be prepared, and submitted under paragraph (a)(1)(i)(A) of this section to ADF&G by the shore-based purchaser within one week after such fish are received by the purchaser, or, if submitted under paragraph (a)(1)(i)(B) of this section, to ADF&G by the vessel-based purchaser within one week after such purchaser returns to shore. For purposes of this paragraph, a "purchaser" is any person who receives from a fishing vessel regulated under this part, groundfish caught in any area or location as defined at § 672.2 of this part, the territorial sea, or internal waters of the State of Alaska.

(2) *Address.* Send these documents to the Director, Commercial Fish Division, Alaska Department of Fish and Game Headquarters, P.O. Box 3-2000, Juneau, Alaska 99802.

(3) *Catcher/processor and mothership/processor vessels.* The operator of any fishing vessel regulated under this part who processes, within the meaning of process under § 672.2, any groundfish on board that vessel must, in addition to the requirements of paragraphs (a)(1) and (a)(2) of this section, meet the following requirements:

(i) Before starting and upon stopping fishing or receiving groundfish in any area, the operator of that vessel must notify the Regional Director of the date and hour in GMT and the position of such activity.

(ii) When shifting operations to a new area, the operator of that vessel must notify the Regional Director of the date and hour in GMT of beginning fishing or receiving groundfish in the new area and the position of the new activity. The notice must be sent to the Regional Director within 48 hours of shifting.

(iii) The notices required in paragraphs (a)(3) (i) and (ii) of this section should be sent by private or commercial communications facilities to the U.S. Coast Guard at Juneau, Alaska, who will relay them to the Regional Director. Only if adequate private or commercial communication facilities have not been successfully contacted may the required notices be delivered via the closest Coast Guard communications station.

(iv) *Catch/receipt and product transfer report.* After notification of starting fishing by a vessel under paragraph (a)(3)(i) of this section, and continuing until that vessel's entire catch or cargo of fish has been offloaded, the operator of that vessel must submit a weekly catch/receipt and product transfer report, including reports of zero tons caught or received, for each weekly period, Sunday through Saturday, GMT, or for each portion of such a period. The catch/receipt and product transfer report must be sent to the Regional Director within one week of the end of the reporting period through such means as the Regional Director will prescribe upon issuing that vessel's permit under § 672.4 of this part. This report must contain the following information:

(A) Name and radio call sign of vessel;

(B) Federal permit number for the Gulf of Alaska groundfish fisheries;

(C) Month and days fished or during which fish were received at sea;

(D) The estimated round weight of all fish caught or received at sea by that vessel during the reporting period by species or species group, rounded to the nearest one-tenth of a metric ton (0.1 mt), whether retained, discarded, or off-loaded;

(E) The number of cartons of fish product, and the estimated unit net weight, in kilograms or pounds, of the carton of processed fish by species or species group produced by that vessel during the reporting period;

(F) The area in which each species or species group was caught; and,

(G) If any species or species groups were caught in more than one area during a reporting period, the estimated round weight of each, to the nearest 0.1 mt, by area.

(H) The product weight, rounded to the nearest one-tenth of a metric ton (0.1 mt) and the number of cartons transferred or offloaded by product type and by species or species group.

(v) *Cargo transfer/offloading log.* For each transfer or offloading of fish product in the EEX, outside the EEZ, within any State's territorial waters, or within the internal waters of any State, the operator of each regulated fishing vessel must record, in a separate transfer log, the following information within twelve hours of the completion of the transfer or offloading:

(A) The time and date (GMT) and location (in geographic coordinates or if within a port, the name of the port) the transfer or offloading began and was completed;

(B) The product weight and product type, by species or species group of all fish products transferred or offloaded to the nearest one-tenth of a metric ton (0.1 mt);

(C) The name and permit number of the vessel receiving the product or, if offloaded to a shoreside location, the name of the location and commercial facility receiving the product; and

(D) The intended port or destination of the receiving vessel if transferred to another vessel.

(b) *Processor and purchaser reporting requirements*—(1) Any U.S. fish processor or purchaser (i.e., any person who receives fish for a commerical purpose from a fishing vessel subject to this part), except:

(i) Any fisherman purchasing fish for his own use as bait or (ii) any foreign fishing vessel permitted to receive U.S. harvested fish at sea, shall accurately complete each written survey authorized by this section and received by the processor or purchaser from the Regional Director.

(2) Surveys shall be conducted at those times considered necessary by the Regional Director, but at least twice, and no more than four times, during the fishing year.

(3) Each survey shall be designed to gather the following information:

(i) Changes in processing plant capacity;

(ii) Changes in the availability of groundfish by species;

(iii) Changes in market demand;

(iv) Changes in expected utilization of processing capacity or expected purchases of groundfish species for the subsequent 12-month period; and

(v) Changes in other factors which the purchaser or processor believes relevant to the accurate determination of the amounts of domestic annual processing (DAP) and domestic nonprocessed fish (DNP).

(4) Completed surveys shall be returned to the Regional Director at the address and by the date specified on the survey.

(c) *U.S. vessels delivering to foreign processing vessels.* (1) The owner or operator of any fishing vessel regulated by this section who has delivered, or intends to deliver, groundfish caught in any Gulf of Alaska regulatory area to a foreign fishing vessel at sea shall accurately complete each written survey authorized by this section and received by the owner or operator from the Regional Director.

(2) Surveys shall be conducted at those times considered necessary by the Regional Director, but at least twice, and no more than four times during the fishing year.

(3) Each survey shall be designed to gather the following information:

(i) Changes in the number and capacity of U.S. vessels which harvest groundfish to be delivered to foreign fishing vessels at sea;

(ii) Changes in regulatory areas of operation;

(iii) Changes in capacity or operations of the foreign fishing vessel to which deliveries are being, or will be, made;

(iv) Changes in quantities and species of groundfish expected to be delivered in the subsequent 12-month period;

(v) Changes in alternative fishery opportunities available to the U.S. vessels; and

(vi) Changes in other factors the owner or operator believes relevant to the accurate determination of the amount of joint venture processing (JVP).

(4) Completed surveys shall be returned to the Regional Director at the address and by the date specified on the survey.

[45 FR 73487, Nov. 5, 1981, as amended at 50 FR 43200, 43203, Oct. 24, 1985; 52 FR 7873, Mar. 13, 1987; 52 FR 49022, Dec. 29, 1987; 53 FR 7760, Mar. 10, 1988; 53 FR 24656, June 29, 1988]

§ 672.6 Area registration.

(a) *General.* The operator of any fishing vessel regulated under this part must register that vessel with the Regional Director and be issued a registration number before fishing for groundfish with hook-and-line gear in any of the following Areas or Districts, as defined at § 672.2 of this part, that are open to directed fishing for sablefish with hook-and-line gear:

(1) Western Regulatory Area,

(2) Central Regulatory Area,

(3) West Yakutat District of the Eastern Regulatory Area, and

(4) Southeast Outside-East Ysakutat Districts (combined) of the Eastern Regulatory Area.

(b) *Information required for area registration.* For each registration, registrants must select only one regulatory area or regulatory district and provide the following information:

(1) The name of the vessel operator;

(2) The name of the vessel;

(3) The vessel's Federal Gulf of Alaska groundfish permit number;

(4) The date the vessel will begin fishing for groundfish in the selected regulatory area or regulatory district with hook-and-line gear; and

(5) The regulatory area or regulatory district in which such hook-and-line fishing will take place.

(c) *Limitations.* (1) Any registration under this section will have the effect of canceling any previous registration as of the date specified under paragraph (b)(4) of this section.

(2) The information required by paragraph (b) of this section must be submitted at:

(i) One of the following three NMFS locations in person or by telephone at one of the following numbers during business hours, 8:00 a.m. to 4:30 p.m., local time, Monday through Friday:

Fishery Management Division, National Marine Fisheries Service, 709 W. 9th Street, Juneau, Alaska, Toll-free telephone (In Alaska) 1-800-478-7644, (Outside Alaska) 1-800-334-7865

Enforcement Division, National Marine Fisheries Service, 1211 Gibson Cove Road, Kodiak, Alaska, Telephone 907-486-3298

Enforcement Division, National Marine Fisheries Service, Post Office Building, Sitka, Alaska, Telephone 907-747-6940; or

(ii) At one of the following numbers between the hours of 8:00 a.m. to 12:00 noon, and 1:00 p.m. to 4:30 p.m., local time, Saturday and Sunday:

Fishery Management Division, National Marine Fisheries Service, Juneau, Alaska, Toll-free telephone (In Alaska) 1-800-478-7644, (Outside Alaska) 1-800-334-7865.

(3) It is unlawful for any person to fish for groundfish from a vessel regulated under this part with hook-and-line gear in any regulatory area or regulatory district, which is open to directed fishing for sablefish with hook-and-line gear, unless that vessel has been registered in accordance with this section and is in receipt of a registration number.

[53 FR 11298, Apr. 6, 1988]

§ 672.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for groundfish with a vessel of the United States which does not have aboard a valid permit issued pursuant to this part.

(b) Forcibly assault, resist, impede, intimidate, or interfere with an observer placed aboard a fishing vessel pursuant to this part.

(c) Conduct any fishing contrary to a notice of inseason adjustment issued under § 672.22(a) of this part.

[45 FR 73487, Nov. 5, 1980, as amended at 52 FR 7873, Mar. 13, 1987; 53 FR 24658, June 29, 1988]

§ 672.8 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 672.9 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

Subpart B—Management Measures

§ 672.20 General limitations.

(a) *Harvest limits*—(1) *Optimum yield.* The optimum yield (OY) for the fishery regulated by this section and by 50 CFR 611.92 is a range of 116,000 to 800,000 mt for target species and the "other species" category in the Gulf of Alaska management area, to the extent this amount can be harvested consistently with this part and 50 CFR Part 611, plus the amounts of "non-specified species" taken incidentally to the harvest of target species and the "other species" category. The species categories are defined in Table 1 of this section.

(2) *Total Allowable Catch (TAC).* The Secretary, after consultation with the North Pacific Fishery Management Council (Council), will specify the annual TAC for each calendar year for each target species and the "other species" category, and will apportion the TACs among DAP, JVP, reserves, and total allowable level of foreign fishing (TALFF).

(i) The sum of the TACs specified must be within the OY range of 116,000 to 800,000 mt for target species and the "other species" category. Initial reserves are established for pollock, Pacific cod, flounder, and "other species" which are equal to twenty percent of the TACs for these species or species groups.

Table 1—Initial (as of January 1, each year) Total Allowable Catch (TAC), Domestic Annual Harvest (DAH), Domestic Annual Processing (DAP), Joint Venture Processing (JVP), and Total Allowable Level of Foreign Fishing (TALFF), all in Metric tons. TAC = DAH + RESERVE + TALFF; DAH = DAP + JVP.

Species	Area [1]	Code	TAC	DAH	DAP	JVP	Reserve	TALFF
Pollock	W/C	701						
	Outside Shelikof							
	E							
	(Total)							
Pacific cod	W	702						
	C							
	E							
	(Total)							

TABLE 1—Initial (as of January 1, EACH YEAR) TOTAL ALLOWABLE CATCH (TAC), DOMESTIC ANNUAL HARVEST (DAH), DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), and Total Allowable Level of Foreign Fishing (TALFF), all in Metric tons. TAC=DAH+RESERVE+TALFF; DAH=DAP+JVP.—Continued

Species	Area [1]	Code	TAC	DAH	DAP	JVP	Reserve	TALFF
Flounders	W	129						
	C							
	E							
	(Total)						NA [2]	
Sablefish	W	703						
	C							
	W. Yakutat							
	SE/Eastern Yakutat							
	(Total)						NA [2]	
Other Rockfish [3]	W	849						
	C							
	E							
	(Total)						NA [2]	
Shelf demersal Rockfish [4]	SEO	749					NA [2]	
Thornyheads	G-W							
Other sp. [5]	G-W							

[1] See Figure 1 of § 672.20 for description of regulatory area and districts. W=Western, C=Central, E=Eastern, G-W=Gulf-Wide, SE=Southeast.

[2] NA not applicable. Reserves are not established.

[3] The category "other rockfish" includes all fish of the genus (Sebastes) except the category shelf demersal rockfish as defined in footnote 3 below and *Sebastolobus* (thornyhead rockfish).

[4] Shelf demersal rockfish include *Sebastes paucispinis* (bocaccio), *S. nebulosus* (China rockfish), *S. caurinus* (copper rockfish), *S. malliger* (quillback rockfish), *S. proriger* (redstripe rockfish), *S. helvomaculatus* (rosethorn rockfish), *S. brevispinis* (silvergrey rockfish), *S. nigrocinctus* (tiger rockfish), *S. ruberrimus* (yelloweye rockfish), *S. pinniger* (canary rockfish).

[5] The category "other species" includes sculpins, sharks, skates, eulachon, smelts, octopus, Atka mackerel, and squid. The TAC is equal to 5 percent of the TACs of the target species.

(ii) The annual determinations of the TAC for each target species and the "other species" category, the reapportionment of reserves, and the reapportionment of surplus DAH may be adjusted, based upon a review of the following:

(A) Assessments of the biological condition of each target species and the "other species" category. Assessments will include, where practicable, updated estimates of maximum sustainable yield (MSY), and acceptable biological catch (ABC); historical catch trends and current catch statistics; assessments of alternative harvesting strategies and related effects on component species and species groups; relevant information relating to changes in groundfish markets; and recommendations for TAC by species or species group.

(B) Socioeconomic considerations that are consistent with the goals and objectives of the fishery management plan for groundfish in the Gulf of Alaska area.

(b) *Prohibited species catch limits* (1) When the Secretary determines after consultation with the Council that the TAC for any species or species group will be fully harvested in the DAP fishery, the Secretary may specify for each calendar year the prohibited species catch (PSC) limit applicable to the JVP and TALFF fisheries for that species or species group. Any PSC limit specified under this paragraph shall be provided as bycatch only, and may not exceed an amount determined to be that amount necessary to harvest target species. Species for which a PSC limit has been specified under this paragraph shall be treated in the same manner as prohibited species under paragraph (e) of this section.

(2) The annual determinations of the PSC limit for each species or species group under paragraph (b)(1) of this section may be adjusted, based upon a review of the following:

(i) Assessments of the biological condition of each PSC species. Assessments will include where practicable updated estimates of maximum sustainable yield (MSY), and acceptable biological catch (ABC); estimates of groundfish species mortality from nongroundfish fisheries, subsistence fisheries, recreational fisheries, and the difference between groundfish mortality and catch. Assessments may include information on historical catch trends and current catch statistics; assessments of alternative harvesting strategies and related effects on component species and species groups; relevant information relating to changes in groundfish markets; and recommendations for PSC limits for species or species group fully utilized by the DAP fisheries:

(ii) Socioeconomic considerations that are consistent with the goals and objectives of the FMP.

(c) *Notices.* (1) *Notices of harvest limits and PSC limits.* As soon as practicable after October 1 of each year, the Secretary, after consultation with the Council, will publish a notice in the FEDERAL REGISTER specifying preliminary annual TAC, DAP, JVP, TALFF, reserves, and applicable PSC amounts for each target species, "other species" category, and species determined to be fully utilized by the DAP fisheries. The preliminary specifications of DAP will be the amounts harvested during the previous year plus any additional amounts the Secretary finds will be harvested by the U.S. fishing industry for delivery to U.S. processors. The preliminary specifications of JVP will be the amounts harvested during the previous year plus any additional amounts the Secretary finds will be harvested by the U.S. fishing industry for delivery to foreign processors, subject to reductions to accommodate increasing DAP. These additional amounts will reflect as accurately as possible the projected increases in U.S. processing and harvesting capacity and the extent to which U.S. processing and harvesting will occur during the coming year. Public comment on these amounts will be accepted by the Secretary for 30 days after the notice is filed for public inspection with the Office of the Federal Register. The Secretary will consider timely comments and, after consultation with the Council, specify the final PSC limits and annual TAC for each target species, the "other species" category, and apportionments thereof among DAP, JVP, TALFF, and reserves. These final amounts will be published as a notice in the FEDERAL REGISTER on or about January 1 of each year. These amounts will replace the corresponding amounts for the previous year.

(2) *Notices of closure.* (i) If the Regional Director determines that the TAC for any target species or of the "other species" category in any regulatory area or district in Table 1 has been or will be reached, the Secretary will publish a notice in the FEDERAL REGISTER prohibiting directed fishing for that species, as defined at § 672.2, in all or part of that area or district, and declaring such species in all or part of that area or district a prohibited species for purposes of paragraph (e) of this section. During the time that such notice is in effect, the operator of every vessel regulated by this part or Part 611 must minimize the catch of that species in the area or district, or portion thereof, to which the notice applies.

(ii) If, in making a determination under paragraph (c)(2)(i) of this section, the Regional Director also determines that directed fishing for other groundfish species in the area or district, or portion thereof, to which the notice applies may lead to overfishing of the species for which the TAC has been or will be achieved, the Secretary will, by notice in the FEDERAL REGISTER, also prohibit or limit such directed fishing for other groundfish species in a manner, including time, area, or gear adjustments, that will prevent overfishing of the species for which the TAC has been or will be taken.

(iii) When making closures or imposing limitations under paragraphs (c)(2) (i) and (ii) of this section, the Regional Director will take into account the following considerations and may allow continued fishing with certain gear types, issuing findings relevant to these considerations:

(A) The risk of biological harm to a groundfish species for which the TAC has been reached;

(B) The risk of socioeconomic harm to authorized users of the groundfish for which the TAC has been reached; and

(C) The impact that a continued closure might have on the socioeconomic well-being of other domestic fisheries.

(iv) If the Regional Director determines that a PSC limit applicable to a directed JVP or TALFF fishery in any regulatory area or district in Table 1 has been or will be reached, the Secretary will publish a notice of closure in the FEDERAL REGISTER closing all further JVP or TALFF fishing in all or part of the regulatory area or district concerned.

(d) *Apportionment of reserves, initial DAH, and adjustment of PSC limits*—(1) *Apportionment of reserves.* (i) In accordance with paragraph (d)(5) of this section and as soon as practicable after April 1, June 1, and August 1, and on such other dates as he determines necessary, the Secretary, after consultation with the Council, may reapportion to TALFF, part or all of the reserves specified in Table 1.

(ii) As soon as practicable after April 1, June 1, and August 1, and on such other dates as he determines necessary, the Secretary may apportion to DAH, in accordance with paragraph (d)(3) of this section, any amounts of any reserve that he determines to be needed to supplement DAH.

(2) *Apportionment of surplus DAP to JVP and surplus DAH to TALFF.* In accordance with paragraph (d)(5) of this section and as soon as practicable after April 1, June 1, and August 1, and on such other dates as he determines necessary, the Secretary will apportion to JVP any part of the DAP amounts that he determines will not be processed by U.S. processors, and may apportion to TALFF any part of the DAH amounts that he determines will not be harvested by U.S. fishermen during the remainder of the year.

(3) *Allocation of increases or decreases in DAH among DAP and JVP.* The Secretary may allocate any increases or decreases in DAH amounts resulting from apportionments under paragraphs (d)(1)(ii) and (d)(2) of this section among the DAP and JVP components of DAH.

(4) *Adjustment of PSC limits resulting from apportionments.* If the Secretary makes inseason apportionments of target species, the Secretary may proportionately increase any PSC limit amount of species fully utilized by the DAP fishery if such increase will not result in overfishing of that species. Any adjusted PSC limit may not exceed the amount determined to be necessary to harvest a target species.

(5) *Standards and procedure for apportionment*—(i) *General.* The Secretary, under paragraphs (d)(1) and (d)(2) of this section, may apportion to TALFF only those amounts that he determines will not be harvested by vessels of the United States during the remainder of the fishing year, and shall apportion to JVP only those amounts he determines will be harvested by vessels of the United States during the remainder of the fishing year but will not be processed by United States processors. The amount of reserve that the Regional Director determines will be harvested by vessels of the United States may, at the discretion of the Secretary, either be apportioned to DAP or JVP, or retained in the reserves as eligible for later apportionment under paragraph (d) of this section.

(ii) *Factors.* In determining whether or not amounts proposed to be apportioned under paragraphs (d)(1) and (d)(2) of this section will be harvested by vessels of the United States during the remainder of the fishing year, the Regional Director will consider the following factors, although he may not be limited to these factors:

(A) Reported U.S. catch and effort by species and area compared to previously projected U.S. harvesting capacity;

(B) Projected U.S. catch and effort by species and area for the remainder of the fishing year;

(C) Amounts of fish, particularly U.S. harvested fish, already purchased or processed by U.S. fish processors during the fishing year, compared to previously projected processing capacity of U.S. fish processors;

(D) Projected processing capacity, and utilization of that capacity for the processing of U.S. harvested fish, by U.S. fish processors for the remainder of the fishing year;

(E) Amounts of U.S. harvested fish already received or processed by foreign fishing vessels, compared to previously projected levels of such receipt or processing; and

(F) The need to maintain orderly fisheries despite any misspecifications of bycatch species amounts in mixed species fisheries.

(iii) *Allocation of increases and decreases in DAH between DAP and JVP.* The Secretary may allocate any increases or decreases in DAH amounts resulting from apportionments under paragraphs (d)(1) and (d)(2) of this section between DAP and JVP.

(iv) *Public comment.* (A) Comments may be submitted to the Regional Director concerning:

(*1*) Whether, and the extent to which, vessels of the U.S. will harvest reserve or DAH amounts during the remainder of the fishing year; and

(*2*) Whether, and the extent to which, U.S. harvested groundfish can or will be processed by U.S. fish processors or received at sea by foreign fishing vessels.

(*3*) Comments should be addressed to Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, Alaska 99802, and must be received by the Regional Director no later than five (5) days before the relevant date specified in paragraph (d)(1) or (d)(2) of this section. When the Secretary determines that apportionment is required on dates other than those specified in paragraph (d)(1) or (d)(2) of this section, he will publish a notice in the FEDERAL REGISTER on the proposed apportionment which will state the period during which comments may be submitted. If the Secretary finds it necessary to apportion additional amounts without affording a prior opportunity for public comment in order to prevent the premature closure of a fishery, public comments will be invited for a period of fifteen (15) days after the effective date of the apportionment. The Secretary will consider all timely comments in deciding whether to make a proposed apportionment or to modify an apportionment that has previously been made, and will publish responses to those comments in the FEDERAL REGISTER as soon as is practicable.

(B) The Secretary will consider any timely comments submitted in accordance with this paragraph in determining whether, and to what extent, vessels of the U.S. will harvest reserve or DAH amounts during the remainder of the fishing year, and whether any part of such amounts will be allocated to TALFF under paragraphs (d)(1) and (d)(2) of this section.

(C) The Regional Director will compile, in aggregate form, the most recent available reports on

(*1*) The level of catch and effort by vessels of the United States fishing for groundfish in the Gulf of Alaska; and

(*2*) The amounts of U.S. harvested groundfish taken in the Gulf of Alaska and processed by U.S. fish processors or delivered at sea to foreign fishing vessels. These data will be available for public inspection during business hours (8:00 a.m.-4:30 p.m. Monday-Friday) at the National Marine Fisheries Service Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska 99802, during the last 25 days of each comment period.

(v) *Procedure.* As soon as practicable after each of the dates specified in, and each additional date selected under paragraphs (d)(1) or (d)(2) of this section, the Secretary will publish in the FEDERAL REGISTER:

(A) Any reserve amounts to be apportioned to TALFF or DAH;

(B) Any DAH amounts to be apportioned to TALFF;

(C) The distribution of amounts apportioned to or from DAH among DAP and JVP;

(D) Any adjustments in PSC limit amounts made under this section;

(E) The reasons for any apportionments and their distribution; and

(F) Responses to any comments received.

(e) *Prohibited species.* (1) Prohibited species, for the purpose of this part, are any of the species of Pacific salmon (*Oncorhynchus* spp.), steelhead trout (*Salmo gairdneri*), Pacific halibut (*Hippoglossus stenolepis*), Pacific herring (*Clupea harengus pallasi*), king crab (*Paralithodes* spp., and *Lithodes* spp.) and Tanner crab (*Chionoecetes* spp.) caught by a vessel regulated under this part while fishing for groundfish in the Gulf of Alaska, unless retention is authorized by other applicable law, including the regulations of the International Pacific Halibut Commission.

(2) Each vessel shall sort its catch as soon as possible after retrieval of the catch and, after allowing for sampling by an observer (if any), shall return any catch of prohibited species or parts thereof to the sea immediately with a minimum of injury regardless of its condition.

(3) There shall be a rebuttable presumption that any prohibited species found onboard a fishing vessel regulated by this part was caught and retained in violation of this part.

(4) In any regulatory area where the TQ in Table 1 of paragraph (c) for any species is "0" (zero), any catch of that species by a vessel regulated by this part, in that fishing area, will be considered catch of a "prohibited species" and will be treated in accordance with this paragraph.

(f) *Halibut.* (1) If during any year, the Regional Director determines that the catch of halibut for that year by U.S. vessels delivering their catch to foreign vessels (JVP vessels) or U.S. vessels delivering their catch to U.S. fish processors (DAP vessels) will reach the applicable prohibited species catch (PSC) limit for halibut established under paragraph (f)(2) of this section, he will publish a notice in the FEDERAL REGISTER prohibiting fishing with trawl gear other than pelagic trawl gear for the rest of the year by the vessels and in the area to which the PSC limit applies, subject to paragraph (f)(2)(iv) of this section.

(2)(i) As soon as practicable after October 1 of each year, the Secretary, after consultation with the Council, will publish a notice in the FEDERAL REGISTER specifying the proposed halibut PSC limits for JVP vessels and DAP vessels. Each halibut PSC may be apportioned among the regulatory areas and districts of the Gulf of Alaska. Public comments on the proposed halibut PSC limits will be accepted by the Secretary for 30 days after the notice is filed for public inspection with the Office of the Federal Register. The Secretary will consider timely comments in determining, after consultation with the Council, the final halibut PSC limits for the next year. A notice of these final halibut PSC limits will be published in the FEDERAL REGISTER as soon as practicable after December 15 and will also be made available to the public by the Regional Director through other suitable means.

(ii) The Secretary will base the annual halibut PSC limits upon the following types of information:

(A) Estimated halibut bycatch in prior years;

(B) Expected changes in groundfish catch;

(C) Expected changes in groundfish biomass;

(D) Current estimates of halibut biomass and stock condition;

(E) Potential impacts of expected fishing for groundfish on halibut stocks and U.S. halibut fisheries;

(F) The methods available for and costs of reducing halibut bycatches in groundfish fisheries; and

(G) Other biological and socioeconomic information that affects the consistency of halibut PSC limits with the objectives of this part.

(iii) The Secretary may, by notice in the FEDERAL REGISTER, change the halibut PSC limits during the year for which they were specified, based on new information of the types set forth in paragraph (f)(2)(ii) of this section.

(iv) When the JVP or DAP vessels to which a halibut PSC limit applies have caught an amount of halibut equal to that PSC, the Regional Director may, by notice in the FEDERAL REGISTER, allow some or all of those vessels to continue to fish for groundfish using bottom-trawl gear under specified conditions, subject to the other provisions of this part. In authorizing and conditioning such continued fishing with bottom-trawl gear, the Regional Director will take into account the following considerations, and issue relevant findings:

(A) The risk of biological harm to halibut stocks and of socioeconomic harm to authorized halibut users posed by continued bottom trawling by these vessels;

(B) The extent to which these vessels have avoided incidental halibut catches up to that point in the year;

(C) The confidence of the Regional Director in the accuracy of the estimates of incidential halibut catches by these vessels up to that point in the year;

(D) Whether observer coverage of these vessels is sufficient to assure adherence to the prescribed conditions and to alert the Regional Director to increases in their incidental halibut catches; and

(E) The enforcement record of owners and operators of these vessels, and the confidence of the Regional Director that adherence to the prescribed conditions can be assured in light of available enforcement resources.

[45 FR 73487, Nov. 5, 1980, as amended at 52 FR 7873, Mar. 13, 1987; 53 FR 7760, 7762, Mar. 10, 1988]

§ 672.21 [Reserved]

§ 672.22 Inseason adjustments.

(a) *General.* (1) Inseason adjustments issued by the Secretary under this paragraph include:

(i) The closure, extension, or opening of a season in all or part of a management area;

(ii) Modification of the allowable gear to be used in all or part of a management area; and

(iii) The adjustment of TAC and PSC limits.

(2) *Determinations.* (i) Any inseason adjustment under this paragraph must be based upon a determination that such adjustments are necessary to prevent;

(A) The overfishing of any species or stock of fish or shellfish; or

(B) The harvest of a TAC for any groundfish species or the taking of a PSC limit for any prohibited species, which on the basis of the best available scientific information is found by the Secretary to be incorrectly specified.

(ii) The selection of the appropriate inseason management adjustments under paragraphs (a)(1)(i) and (a)(1)(ii) of this section must be from the following authorized management measures and must be based upon a determination by the Regional Director that the management adjustment selected is the least restrictive necessary to achieve the purpose of the adjustment:

(A) Any gear modification that would protect the species in need of conservation, but which would still allow other fisheries to continue; or

(B) An inseason adjustment which would allow other fisheries to continue in noncritical areas and time periods; or

(C) Closure of a management area and season to all groundfish fishing.

(iii) The adjustment of a TAC or PSC limit for any species under paragraph (a)(1)(iii) of this section must be based upon a determination by the Regional Director that the adjustment is based upon the best available scientific information concerning the biological stock status of the species in question and that the currently specified TAC or PSC limit is incorrect. Any adjustment to a TAC or PSC limit must be reasonably related to the change in biological stock status.

(3) *Data.* All information relevant to one or more of the following factors may be considered in making the determinations required under paragraph (a)((2) of this section;

(i) The effect of overall fishing effort within a regulatory area;

(ii) Catch per unit of effort and rate of harvest;

(iii) Relative abundance of stocks within the area;

(iv) The condition of the stock within all or part of a regulatory area;

(v) Economic impacts on fishing businesses being affected; or

(vi) Any other factor relevant to the conservation and management of groundfish species for which a TAC has been specified or incidentally caught species which are designated as prohibited species or for which a PSC limit has been specified.

(b) *Procedure.* (1) No inseason adjustment issued under this section will take effect until;

(i) The Secretary has filed the proposed adjustment for public inspection with the Office of the Federal Register, and

(ii) The Secretary has published the proposed adjustment in the FEDERAL REGISTER for public comment for a period of thirty (30) days before it is made final, unless the Secretary finds for good cause that such notice and public procedure is impracticable, unnecessary, or contrary to the public interest.

(2) If the Secretary decides, for good cause, that an adjustment is to be made without affording a prior opportunity for public comment, public comments on the necessity for, and extent of, the adjustment will be received by the Regional Director for a period of fifteen (15) days after the effective date of the notice.

(3) During any such 15-day period, the Regional Director will make available for public inspection, during business hours, the aggregate data upon which an adjustment was based.

(4) If written comments are received during any such 15-day period which oppose or protest an inseason adjustment issued under this section, the Secretary will reconsider the necessity for the adjustment and, as soon as practicable after that reconsideration, will either;

(i) Publish in the FEDERAL REGISTER a notice of continued effectiveness of the adjustment, responding to comments received; or

(ii) Modify or rescind the adjustment.

(5) Notices of inseason adjustments issued by the Secretary under paragraph (a) of this section will include the following information;

(i) A description of the management adjustment;

(ii) The reasons for the adjustment and the determinations required under paragraph (a)(2) of this section; and

(iii) The effective date and any termination date of such adjustment. If no termination date is specified, the adjustment will terminate on the last day of the fishing year.

(c) *Prohibition*. Any fishing contrary to a notice issued under this section is prohibited.

[45 FR 73487, Nov. 5, 1980, as amended at 52 FR 7875, Mar. 13, 1987; 53 FR 7762, Mar. 10, 1988]

§ 672.23 Seasons.

(a) Fishing for groundfish in the regulatory areas and districts of the Gulf of Alaska is authorized from January 1 to December 31, subject to the other provisions of this part, except as provided in paragraph (b) of this section.

(b) Directed fishing for sablefish with hook and line and pot gear in the regulatory areas and districts of the Gulf of Alaska is authorized from April 1 through Decemer 31, subject to the other provisions of this part.

[50 FR 43202, Oct. 24, 1985]

§ 672.24 Gear limitations.

(a) *Biodegradable escape panels required for all sablefish pots*. Each sablefish pot used in fishing under these regulations shall have a biodegradable panel. This panel shall consist of an opening in the webbing of the pot which has been laced, sewn, or secured by untreated cotton twine or other natural fiber no larger than 120 thread which, upon deterioration, produces an opening in the web with a perimeter equal to the perimeter of the tunnel eye opening.

(b) *Gear restrictions and allocations*—(1) *Eastern Area*. No person may use any gear other than hook-and-line and trawl gear when fishing for sablefish in the Eastern Area. No person may use any gear other than hook-and-line gear to engage in directed fishing for sablefish. When vessels using trawl gear have harvested 5 percent of the TAC for sablefish during any year, further trawl catches of sablefish must be treated as prohibited species as provided by paragraph (b)(3)(ii) of this section. Vessels using gear types other than those specified above in the Eastern Regulatory Area must treat any catch of sablefish as a prohibited species.

(2) *Central and Western Areas*. In the Western Area during 1988, hook-and-line gear may be used to take up to 55 percent of the TAC for sablefish; pot gear may be used to take up to 25 percent of that TAC; and trawl gear may be used to take up to 20 percent of that TAC. In the Central Area and beginning with 1989 in the Western Area, hook-and-line gear may be used to take up to 80 percent of the stablefish TAC in each area and trawl gear may be used to take up to 20 percent of that TAC. Vessels using gear types other than hook-and-line and trawl in the Central Regulatory Area, and vessels using gear types other than hook-and-line and trawl gear in the Western Regulatory Area after 1988, must treat any catch of sablefish in these areas as a prohibited species.

(3) *Sablefish bycatch amounts.* (i) When the Regional Director determines that the share of the sablefish TAC assigned to any type of gear for any year and any area or district under this paragraph may be taken before the end of that year, the Secretary, in order to provide adequate bycatch amounts to ensure continued groundfish fishing activity by that gear group, will, by notice in the Federal Register, prohibit directed fishing for sablefish by persons using that type of gear for the remainder of that year.

(ii) If the share of the sablefish TAC assigned to any type of gear for any year and any area or district under this paragraph is reached, further catches of sablefish must be treated as a prohibited species by persons using that type of gear for the remainder of that year.

(c) *Trawls other than pelagic trawls.* (1) No person may trawl in any of the following areas in the vicinity of Kodiak Island (see Figure 1, Area Type I) from a vessel having any trawl other than a pelagic trawl either attached or on board:

(i) *Alitak Flats and Towers Areas:* All water of Alitak Flats and the Towers Areas enclosed by a line connecting the following seven points in the order listed:

Reference point	N. lat.	W. long.	Land description
a	56°59'4"	154°31'1"	Low Cape
b	57°00'0"	155°00'0"	
c	56°17'0"	155°00'0"	
d	56°17'0"	153°52'0"	
e	56°33'5"	153°52'0"	Cape Sitkinak
f	56°54'5"	153°32'5"	East point of Twoheaded Island
g	56°56'0"	153°35'5"	Kodiak Island, thence, along the coastline of Kodiak Island until intersection of
a	56°59'4"	154°31'1"	Low Cape.

(ii) *Marmot Flats Area:* All water enclosed by a line connecting the following five points in the clockwise order listed:

Reference point	N. lat.	W. long.	Land description
a	58°00'0"	152°30'0"	
b	58°00'0"	151°47'0"	
c	57°37'0"	151°47'0"	
d	57°37'0"	152°10'1"	Cape Chiniak, thence, along the coastline of Kodiak Island to
e	57°54'5"	152°30'0"	North Cape.
a	58°00'0"	152°30'0"	

(2) From February 15 to June 15, no person may trawl in any of the following areas in the vicinity of Kodiak Island (see Figure 1, Area Type II) from a vessel having nay trawl other than a pelagic trawl either attached or on board:

(i) *Chirikof Island Area:* All waters surrounding Chirikof Island enclosed by a line connecting the following four points in the counter clockwise order listed:

Reference point	N. lat.	W. long.
a	56°07'0"	155°13'0"
b	56°07'0"	156°00'0"
c	55°41'0"	156°00'0"
d	55°41'0"	155°13'0"
a	56°07'0"	155°13'0"

(ii) *Barnabas Area:* All waters enclosed by a line connecting the following five points in the counter clockwise order listed:

Reference point	N. lat.	W. long.	Land description
a	57°00'0"	153°18'0"	Black Point.
b	56°56'0"	153°09'0"	
c	57°22'0"	152°18'5"	South Tip of Ugak Island.
d	57°23'5"	152°17'5"	North Tip of Ugak Island.
e	57°25'3"	152°20'0"	Narrow Cape, thence, along the coastline of Kodiak Island to
f	57°04'2"	153°30'0"	Cape Kasick to
a	57°00'0"	153°18'0"	Black Point, incl. inshore waters.

(3) Each person using a trawl to fish in any area limited to pelagic trawling under paragraph (c)(1) and (c)(2) of this section must maintain in working order on that trawl a properly functioning, recording net-sonde device, and must retain all net-sonde recordings aboard the fishing vessel during the fishing year.

(4) No person using a trawl to fish in any area limited to pelagic trawling under paragraphs (c)(1) and (c)(2) of this section will allow the footrope of that trawl to be in contract with the seabed for more than 10 percent of the period of any tow, as indicated by the net-sonde device.

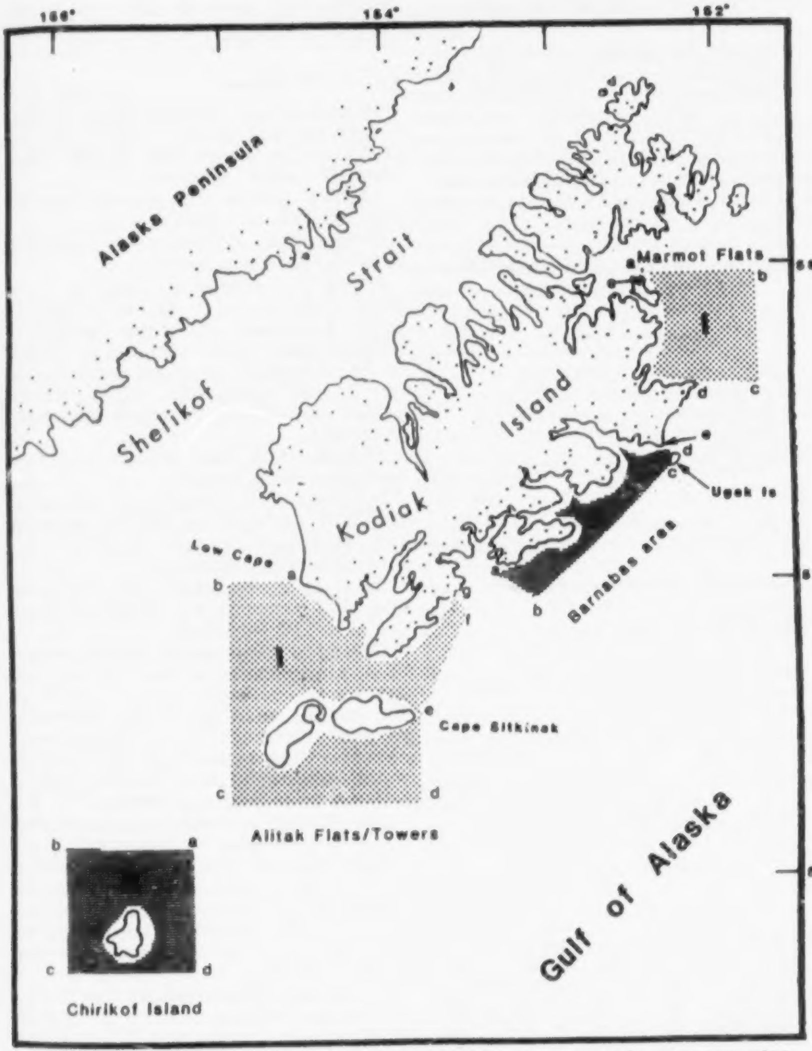
156°
154°
152°
Alaska Peninsula
Shelikof Strait
Kodiak Island
Marmot Flats
a
b
I
c
d
e
58°
Ugak Is
Barnabas area
b
c
d
e
f
57°
Low Cape
a
b
I
Cape Sitkinak
e
c
d
Alitak Flats/Towers
56°
b
a
c
d
Chirikof Island
Gulf of Alaska

Figure 1. Areas around Kodiak Island closed to trawling except with pelagic trawls. TYPE I areas are closed year round. TYPE II areas are closed February 15 to June 15. See Section 672.24, Gear Limitations, for coordinate descriptions.

[45 FR 73487, Nov. 5, 1981, as amended at 50 FR 43202, Oct. 24, 1985; 52 FR 7876, Mar. 13, 1987; 52 FR 12183, Apr. 15, 1987; 53 FR 6650, Mar. 2, 1988; 53 FR 7762, Mar. 10, 1988]

EFFECTIVE DATE NOTE: At 52 FR 7876, Mar. 13, 1987, § 672.24 was amended by adding paragraph (c), effective from April 8, 1987, through December 31, 1989.

§ 672.25 Disposal of fishing gear and other articles. [Reserved]

[50 FR 43203, Oct. 24, 1985]

§ 672.26 [Reserved]

§ 672.27 Observers.

All fishing vessels subject to this part must, when so requested by the Regional Director, take aboard an observer.

PART 674—HIGH SEAS SALMON FISHERY OFF ALASKA

Subpart A—General

Sec.
674.1 Purpose and scope.
674.2 Definitions.
674.3 Relation to other laws.
674.4 Permits.
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674.6 [Reserved]
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Subpart B—Management Measures

674.20 General.
674.21 Time and area limitations.
674.22 Catch limitations.
674.23 Modifications of time and area limitations.
674.24 Gear restrictions.

Authority: 16 U.S.C. 3631 *et seq.*; 16 U.S.C. 1801 *et seq.*

Source: 46 FR 33047, June 26, 1981 (interim rule), and 46 FR 57302, Nov. 23, 1981 (final rule), unless otherwise noted.

Subpart A—General

§ 674.1 Purpose and scope.

(a) The purpose of this part is to implement the fishery management plan (FMP) for the High Seas Salmon Fishery off the Coast of Alaska East of 175 Degrees East Longitude. The FMP was developed by the North Pacific Fishery Management Council under the Magnuson Act.

(b) This part governs fishing for salmon by fishing vessels of the United States in the EEZ seaward of Alaska east of 175° E. longitude. All provisions of this part shall remain in effect until modified, revoked, or superseded.

[46 FR 33047, June 26, 1981 and 46 FR 57302, Nov. 23, 1981, as amended at 53 FR 24659, June 29, 1988]

§ 674.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

ADF&G means the Alaska Department of Fish and Game.

Commercial fishing means fishing for fish for sale or barter.

Hand troll gear means one or more lines with lures or hooks attached, drawn through the water behind a moving vessel, and retrieved by hand or hand-cranked reels or gurdies and not by any electrically, hydraulically, or mechanically-powered device or attachment.

Management area means the two areas described below:

(a) *West Area* means the waters of the EEZ seaward of Alaska between 175° E. longitude and 143°53′36″ W. longitude (Cape Suckling);

(b) *East Area* means the waters of the EEZ seaward of Alaska east of 143°53′36″ W. longitude.

Optimum yield means that amount of any species of salmon which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities, as specified in the FMP.

Personal use fishing means fishing other than commercial fishing.

Power troll gear means one or more lines, with hooks or lures attached, drawn through the water behind a moving vessel, and originating from a power gurdy or power-driven spool fastened to the vessel, the extension or retraction of which is directly to the gurdy or spool.

Regional Director means the Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, Alaska 99802, telephone 907-586-7221, or an individual to whom the Regional Director has delegated appropriate authority.

Salmon means the following species:
Chinook (or king) salmon (*Oncorhynchus tshawytscha*);
Coho (or silver) salmon (*O. kisutch*);
Pink (or humpback) salmon (*O. gorbuscha*);
Sockeye (or red) salmon (*O. nerka*); and
Chum (or dog) salmon (*O. keta*).

[46 FR 33047, June 26, 1981 and 46 FR 57302, Nov. 23, 1981, as amended at 53 FR 24655, 24660, June 29, 1988]

§ 674.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraphs (b), (c), and (d) of this section.

(b) For regulations concerning fishing for groundfish in the Gulf of Alaska, see Part 672 of this chapter.

(c) This Part 674 does not apply to fishing for salmom by vessels other than vessels of the United States conducted under the North Pacific Fisheries Act of 1954, 16 U.S.C. 1021-1035. Part 661 of this chapter concerns fishing for salmon seaward of Washington, Oregon, and California.

(d) This Part 674 will be administered in close coordination with ADF&G's administration for the State of Alaska's regulations governing the salmon troll fishery off Southeast Alaska. Because no commercial fishing for salmon is permitted in the EEZ west of Cape Suckling, all commercial salmon fishing west of Cape Suckling will take place in the territorial sea and be subject to Alaska's management authority.

[53 FR 24659, June 29, 1988]

§ 674.4 Permits.

(a) *General*—(1) *Commercial fishing using power troll gear.* Commercial fishing for salmon in the management area using power troll gear may be engaged in by any operator of a fishing vessel who:

(i) Held a valid State of Alaska power troll permanent entry permit on May 15, 1979, or is a transferee under paragraph (c) of this section of an operator who held such a permit on that date;

(ii) Held a valid State of Alaska power troll interim use permit on May 15, 1979; or

(iii) Holds a permit issued by the Regional Director under paragraph (b) of this section.

(2) [Reserved]

(3) *Personal use fishing.* Personal use fishing in the management area may be engaged in by any person who at the time of such fishing holds a valid State of Alaska sport fishing license.

(4) No person may engage in power trolling for salmon in the management area unless that person is described in paragraph (a)(1) of this section; except that no permit is required of a crew member or other person assisting in commercial salmon fishing operations if a person described in paragraph (a)(1) of this section is on board the same fishing vessel and engaged in commercial fishing. No person may engage in personal use fishing for salmon in the management area unless that person is described in paragraph (a)(3) of this section.

(5) The authority to engage in fishing for salmon in the management area that is granted by this paragraph (a) constitutes a use privilege which may be revoked or modified without compensation.

(b) *Permits issued by the Regional Director*—(1) *Eligibility.* (i) Except as provided in paragraph (b)(1)(ii) of this section, any person is eligible for a permit described in paragraph (a)(1)(iii) of this section if that person, during any one of the calendar years 1975, 1976, or 1977:

(A) Operated a fishing vessel in the management area; (B) engaged in commercial fishing for salmon in the management area; (C) caught salmon in the management area using power troll gear; and (D) landed such salmon.

(ii) The following persons are not eligible: (A) Persons described in paragraph (a)(1)(i) or (a)(1)(ii) of this section; (B) persons who once held but no longer hold a State of Alaska power troll permanent entry or interim-use permit; and (C) persons already holding a permit under this paragraph (b).

(2) *Application.* (i) Each applicant for a permit under this paragraph shall submit a written application to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(ii) Each applicant shall provide the following information:

(A) The applicant's name, mailing address, and telephone number; (B) the name of the fishing vessel; (C) the fishing vessel's United States Coast

Guard documentation number or State registration number; (D) the home port of the fishing vessel; (E) the length and registered tonnage of the fishing vessel; (F) the color of the fishing vessel; (G) the type of fishing gear used by the fishing vessel; and (H) the signature of the applicant.

(iii) The information required by paragraphs (b)(2)(ii)(A) through (G) shall be provided for each vessel which the applicant intends to use for commercial fishing under this part. Any changes in such information occurring after a permit is issued shall be reported to the Regional Director within 30 days of that change.

(iv) Each applicant shall submit State fish tickets or other equivalent documents showing the actual landing of salmon taken in the management area by the applicant with power troll gear during any one of the years 1975 to 1977.

(3) *Issuance.* (i) Except as provided in Subpart D of 15 CFR Part 904, upon receipt of a properly completed application and any document required under paragraph (b)(2)(iv) of this section, the Regional Director will promptly determine whether permit eligibility conditions have been met, and if so, will issue a permit. If the permit is denied, the Regional Director will notify the applicant in accordance with paragraph (d) of this section.

(ii) If an incomplete or improperly completed permit application is filed, or if any document required under paragraph (b)(2)(iv) of this section has not been filed, the Regional Director shall promptly notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days following the date of receipt of notification, the application shall be considered abandoned.

(4) *Alteration.* No person shall alter, erase, or mutilate any permit. Any permit that has been altered, erased, or mutilated shall be invalid.

(5) *Replacement.* Replacement permits may be issued to replace lost or unintentionally mutilated permits. An application for a replacement permit shall not be considered a new application.

(6) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

(c) *Transfer of authority to fish for salmon in the management area*—(1) *Holders of State of Alaska power troll permanent entry permits.* (i) The authority of any person described in paragraph (a)(1)(i) of this section to engage in commercial fishing for salmon using power troll gear in the management area shall expire upon the transfer of that person's State of Alaska power troll permanent entry permit to another and shall be transferred to the new holder of that permit.

(ii) Any person to whom transfer of a State of Alaska power troll permanent entry permit is denied by the State of Alaska may apply, with the consent of the current holder of that permit, to the Regional Director for transfer to the applicant of the current holder's authority to engage in commercial fishing for salmon using power troll gear in the management area. The Regional Director shall approve the transfer if it is determined that the applicant had the ability to participate actively in the fishery at the time the application for transfer of the permit was filed with the State of Alaska; that the applicant has access to power troll gear necessary for participation in the fishery; that the State of Alaska has not instituted proceedings to revoke the permit on the ground that it was fraudulently obtained; and that the proposed transfer of the permit is not a lease. The application shall be filed with the Regional Director within thirty days of the denial by the State of Alaska of transfer of the permit. The application shall include all documents and other evidence submitted to the State of Alaska in support of the proposed transfer of the permit and a copy of the State of Alaska's decision denying the transfer of the permit. The Regional Director may request additional information from the applicant or from the State of Alaska to assist in the consideration of the application. Upon approval of the application by the Regional Director, the authority of the permit holder to engage in commercial fishing for salmon in the management area using power troll gear shall expire, and that authority shall be transferred to the applicant.

(2) *Other permits.* Except as provided in paragraph (c)(3) of this section, the authority of any person described in paragraph (a)(1)(ii), (a)(1)(iii), or (a)(3) of this section to fish for salmon in the management area may not be transferred to any other person. Except for emergency transfers, the authority to engage in commercial fishing for salmon which was transferred under paragraph (c)(1)(ii) of this section may not be transferred to any other person except the current holder of the State of Alaska power troll permanent entry permit from which that authority was originally derived. That authority may be transferred to the current holder of that permit upon receipt of written notification of the transfer by the Regional Director, from which time the transferee under paragraph (c)(1)(ii) of this section shall no longer be authorized to engage in commercial fishing for salmon using power troll gear in the management area.

(3) *Emergency transfers—authority to use power troll gear.* The authority of any person described in paragraph (a)(1) of this section to engage in commercial fishing for salmon using power troll gear in the management area may be transferred to another for a period not lasting beyond the end of the calendar year of the transfer when sickness, injury, or other unavoidable hardship prevents the holder of that authority from engaging in such fishing. Such a transfer shall take effect automatically upon approval by the State of Alaska of an emergency transfer of a State of Alaska power troll entry permit, in accordance with the terms of the permit transfer. Any person to whom emergency transfer of a State of Alaska power troll entry permit is denied by the State of Alaska and any person desiring to obtain emergency transfer of a Federal commercial power troll permit previously issued by the Regional Director may apply, with the consent of the current holder of that permit, to the Regional Director for transfer to the applicant of the current holder's authority to engage in commercial fishing for salmon using power troll gear in the management area for a period not lasting beyond the calendar year of the proposed transfer. The Regional Director shall approve the transfer if he determines that sickness, injury, or other unavoidable hardship prevents the current permit holder from engaging in such fishing; that the applicant had the ability to participate actively in the fishery at the time the application for emergency transfer of the permit was filed with the State of Alaska or, in the case of a Federal permit, with the Regional Director; that the applicant has access to power troll gear necessary for participation in the fishery; and that the State of Alaska has not instituted proceedings to revoke the permit on the ground that it was fraudulently obtained. The application in the case of a State of Alaska permit shall be filed with the Regional Director within thirty days of the denial by the State of Alaska of emergency transfer of the permit. The application shall include all documents and other evidence submitted to the State of Alaska in support of the proposed emergency transfer of the permit and a copy of the State of Alaska's decision denying the emergency transfer of the permit. The Regional Director may request additional information from the applicant or from the State of Alaska to assist in the consideration of the application. Upon approval of the application by the Regional Director, the authority of the permit holder to engage in commercial fishing for salmon using power troll gear in the management area shall expire for the period of the emergency transfer, and that authority shall be transferred to the applicant for that period.

(d) *Appeals and hearings.* (1) A decision by the Regional Director: (i) To deny a permit under paragraph (b)(3)(i) of this section; or (ii) to deny transfer of authority to engage in commercial fishing for salmon in the management area under paragraph (c) of this section, shall be in writing, shall state the facts and reasons therefor, and shall advise the applicant of the rights provided in this paragraph (d).

(2) Any such decision of the Regional Director shall be final thirty days after receipt by the applicant, unless an appeal is filed with the Assistant Administrator within that time. Failure to file a timely appeal shall constitute waiver of the appeal. (Address: Assistant Administrator, National Marine Fisheries Service, Room 400, Page 2 Building, 3300 Whitehaven Street, NW., Washington, DC 20235). Appeals under this paragraph shall be in writing, shall set forth the reasons why the appellant believes the Regional Director's decision was in error, and shall include any supporting facts or documentation. At the time the appeal is filed with the Assistant Administrator, the appellant may request a hearing with respect to any disputed issue of material fact. Failure to request a hearing at this time shall constitute a waiver of the hearing. If a request for a hearing is filed, the Assistant Administrator may order a hearing if it is determined that a hearing is necessary to resolve material issues of fact and shall so notify the appellant. If the Assistant Administrator orders a hearing, that order shall also serve to appoint a hearing examiner to conduct an informal fact finding inquiry into the matter. Following the hearing, the hearing examiner shall promptly furnish the Assistant Administrator with a report and appropriate recommendations. As soon as practicable after considering the matters raised in the appeal, and any report or recommendation of the hearing examiner in the event a hearing is held under this section, the Assistant Administrator shall notify the appellant in writing of the final decision. The notice shall summarize the findings of the Assistant Administrator and set forth the basis of the decision. The decision of the Assistant Administrator shall be final and unappealable.

(e) *Display.* Any permit or license described in paragraph (a)(1), or (a)(3) of this section shall be on board the vessel at all times while the vessel is in the management area, and shall be displayed for inspection upon request by an authorized officer.

(f) For purposes of this section, the term "person" excludes any nonhuman entity.

[47 FR 57302, Nov. 23, 1981, as amended at 49 FR 1044, Jan. 6, 1984]

§ 674.5 Recordkeeping and reporting.

The operator of any fishing vessel subject to this part whose port of landing is in the United States but outside Alaska, or who sells, transfers, or delivers salmon in the EEZ, must submit a completed Alaska fish ticket, or a completed fish ticket of the State where the salmon are landed which contains all of the information required on an Alaska fish ticket, within one week after the date of each landing, sale, transfer, or delivery to the Director, Division of Commercial Fisheries, Alaska Department of Fish and Game, P.O. Box 3-2000, Juneau, AK 99802.

[49 FR 29612, July 23, 1984, as amended at 53 FR 24656, 24660, June 29, 1988]

§ 674.6 [Reserved]

§ 674.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for, take, or retain any salmon in violation of the Act or this part, including but not limited to the following:

(1) During closed seasons or in closed areas specified in Subpart B of this part;

(2) By means of gear or methods prohibited by Subpart B of this part;

(3) If such salmon are less than the minimum length specified in Subpart B of this part; or

(4) In number exceeding the limit for personal use fishing as specified in Subpart B of this part.

(b) Engage in fishing for salmon in the management area except to the extent authorized by § 674.4(a) of this part.

[46 FR 33047, June 26, 1981 and 46 FR 57302, Nov. 23, 1981, as amended at 53 FR 24659, June 29, 1988]

§ 674.8 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 674.9 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

Subpart B—Management Measures

§ 674.20 General.

The management measures prescribed in this subpart shall apply to all fishing for salmon in the management area.

§ 674.21 Time and area limitations.

(a) *Commercial fishing*—(1) *West area.* Commercial fishing for salmon is not permitted at any time.

(2) *East area.* Fishing periods in 1988 (Alaska Daylight Time) are as follows:

(i) Chinook salmon—0001 hours on July 1 until the commercial troll fleet reaches its harvest guideline of 221,000 chinook from the base stocks.

(ii) Salmon species other than chinook—0001 hours July 1 to 2400 hours on September 20.

(b) *Personal use fishing.* Personal use fishing in the east and west areas is permitted at all times.

(c) Fishing times, harvest limits, and areas prescribed in this section may be modified in accordance with section 7(a) of the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3636); or under § 674.23 of this part.

[46 FR 33047, June 26, 1981 and 46 FR 57302, Nov. 23, 1981, as amended at 50 FR 25248, June 18, 1985; 53 FR 25493, July 7, 1988]

§ 674.22 Catch limitations.

(a) *Size restrictions*—(1) *Minimum size limit*—(i) *Chinook salmon.* No chinook salmon less than 28 inches in length with the head on, or less than 23 inches in length with the head off, may be retained. (See Figure 1.)

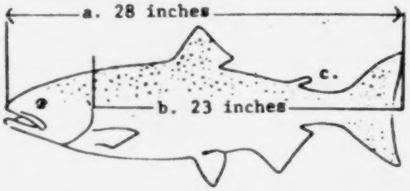

Figure 1. Chinook salmon with lines indicating (a) the minimum legal length for a whole chinook salmon, (b) the minimum legal length for a chinook salmon with its head removed, and (c) the adipose fin.

(ii) *Other salmon.* There is no minimum size limit for coho, pink, chum or sockeye salmon.

(2) *Method of measurement.* For purposes of paragraph (a)(1)(i) of this section, a salmon with its head on shall be measured in a straight line from the tip of the snout to the midpoint of a straight line between the upper and lower tips of the tail in its natural open position. for the same purposes, a salmon with its head off shall be measured in a straight line from the midpoint of the cleithral (gill) arch to the midpoint of a straight line between the upper and lower tips of the tail in its natural open position. (See Figure 1.)

(3) *Mutilation.* No person in the management area shall mutilate or disfigure a chinook salmon in any manner that would interfere with the determination of that salmon's length in accordance with paragraphs (a)(1) and (a)(2) of this section.

(b) *Personal use daily catch limit.* No person may catch and retain more than six (6) salmon during any day for personal use, and no more than three (3) of those salmon may be chinook salmon. No person in the management area may possess more than twelve (12) salmon for personal use, and no more than three (3) of these salmon may be chinook salmon.

(c) *Possession of prohibited salmon species.* When a part of the management area has been closed to fishing for a species of salmon, no person in that part of the management area may possess a salmon of that species while engaged in commercial fishing.

(d) *Landing requirements.* Every salmon satisfying minimum size limits that is caught in the management area which has had its adipose fin removed or clipped (See Figure 1) shall be retained and landed with its head on. This salmon shall be made available for retrieval of the coded wire tag by an appropriate official at the port of landing.

§ 674.23 Modifications of time and area limitations.

(a) *Standards governing modifications.* (1) Following consultation with ADF&G, the Secretary may modify the time and area limitations prescribed in § 674.21 of this part by issuing a field order in accordance with paragraph (b) of this section. Any such modification shall be based upon a determination by the Regional Director that:

(i) The condition of any salmon species in any part of the management area is substantially different from the condition anticipated in the FMP; and

(ii) This difference reasonably requires a modification of time or area limitations if salmon of any species are to be adequately conserved and managed. In making this determination, the Regional Director may consider any of the following factors:

(A) The effect of overall fishing effort within any part of the management area;

(B) Catch-per-unit-of-effort and rate of harvest;

(C) Relative abundance of salmon stocks within the management area;

(D) Condition of salmon stocks throughout their ranges; and

(E) Any other factors relevant to the conservation of salmon.

(2) Following consultation with ADF&G, the Secretary shall prohibit fishing for any or all species of salmon in all or part of the management area if such a prohibition is necessary to prevent the total harvest of chinook salmon for the fishing season from exceeding either the maximum amount of the optimum yield or any other value within the optimum yield range for chinook salmon that the Secretary determines to be necessary for the conservation and management of chinook salmon. The Secretary will do this by issuing a field order in accordance with paragraph (b) of this section.

(b) *Field orders.* (1) Any field order issued by the Secretary under this section shall include the following:

(i) A description of the modification of time and area limitations;

(ii) The reasons for the modification; and

(iii) The effective date of the modification.

(2) No field order issued under this section may take effect until:

(i) It has been filed for publication with the Federal Register;

(ii) It has been posted for 48 hours, and otherwise made available to the public, in accordance with procedures customarily used by ADF&G for posting and publicizing similar notices of opening or closure;

(iii) It has been broadcast for 48 hours at those time intervals, channels and frequencies customarily used by ADF&G to broadcast similar notices of opening or closure; and

(iv) The public has been offered the opportunity to comment on the modification for a period of at least thirty (30) days, a final field order responding to any comments received has been published in the Federal Register, and a further waiting period of thirty

(30) days has passed, unless the Secretary finds good cause for dispensing with these requirements in accordance with 5 U.S.C. 553.

(3) If the Secretary determines under 5 U.S.C. 553 that there is good cause for issuing a field order without affording prior opportunity for public comment, he shall receive and consider public comments for a period of thirty (30) days after the effective date of the field order. During this period, the Regional Director shall make available for public inspection during business hours the aggregate data upon which the modification effected by the field order was based. As soon as practicable after the end of this period, the Secretary shall reconsider the necessity of the modification, and shall publish in the FEDERAL REGISTER either a notice of the continued effectiveness of the field order or an amendment or rescission of the field order in accordance with the standards and procedures prescribed in this section, unless the field order has already expired or has been rescinded.

(4) Any field order issued under this section shall remain in effect until rescinded by the Secretary in accordance with the standards and procedures prescribed in this section, or until any expiration date stated in the field order, whichever is earlier.

[46 FR 33047, June 26, 1981, as amended at 46 FR 57302, Nov. 23, 1981; 48 FR 17359, Apr. 22, 1983; 53 FR 24660, June 29, 1988]

§ 674.24 Gear restrictions.

(a) *Commercial fishing*—(1) Commercial fishing for salmon in the management area may be engaged in only through the use of power troll gear or hand troll gear.

(2) No vessel engaged in commercial fishing for salmon in the management area using power troll gear may at any one time utilize more than four (4) lines south of the line segments connecting the following points:

Latitude	Longitude
58°12'45" N.	136°39'30" W. (Cape Spencer)
58°12'45" N.	138°00' W.
58°00' N.	138°00' W.
58°00' N.	143°33'36" W.

North of these line segments, no vessel engaged in commercial fishing for salmon in the management area using power troll gear may at any one time utilize more than six (6) lines. No vessel that is equipped for use in commercial fishing for salmon using power troll gear may at any one time while in the management area have more than six (6) gurdies mounted and in operational condition.

(3) No vessel engaged in commercial fishing for salmon in the management area using hand troll gear may at any one time utilize more than two (2) lines and gurdies or four (4) sport rods; and no vessel that is equipped for use in such fishing may at any one time while in the management area have more than two (2) gurdies mounted and in operational condition.

(b) *Personal use fishing.* No person engaged in personal use fishing for salmon in the management area may at any one time utilize more than one (1) line held in the hand or attached to a hand-held or closely attended rod. This line may not at any one time have attached to it more than one (1) artificial lure or two (2) flies or two (2) single hooks.

[46 FR 57302, Nov. 23, 1981, as amended at 48 FR 34965, Aug. 2, 1983]

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

Subpart A—General

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675.6 [Reserved]
675.7 Prohibitions.
675.8 Facilitation of enforcement.
675.9 Penalties.

Subpart B—Management Measures

675.20 General limitations.
675.21 Prohibited species catch (PSC) limitations.
675.22 Time and area closures.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

Subpart A—General

§ 675.1 Purpose and scope.

(a) Regulations in this part govern fishing for groundfish by vessels of the United States within that portion of: (1) The Bering Sea, and (2) the North Pacific Ocean adjacent to the Aleutian Islands west of 170°00' W. longitude, over which the United States exercises exclusive fishery management authority under the Magnuson Act.

(b) For regulations governing fishing in the Bering Sea and Aleutian Islands groundfish fishery by fishing vessels other than vessels of the United States, see 50 CFR 611.93.

(c) These regulations implement the Bering Sea and Aleutian Islands groundfish fishery management plan developed by the North Pacific Fishery Management Council.

[46 FR 63307, Dec. 31, 1981, as amended at 53 FR 24659, June 29, 1988]

§ 675.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

ADF&G means the Alaska Department of Fish and Game.

Bering Sea and Aleutian Islands management area means the EEZ in the Bering Sea, and that portion of the EEZ in the North Pacific Ocean that is adjacent to the Aleutian Islands and west of 170°00' W. longitude.

(a) The Bering Sea subarea of the management area means that portion of the EEZ contained in areas I, II, and III of Figure 1.

(b) The Aleutian Islands subarea of the mangement area means that portion of the EEZ contained in area IV of Figure 1.

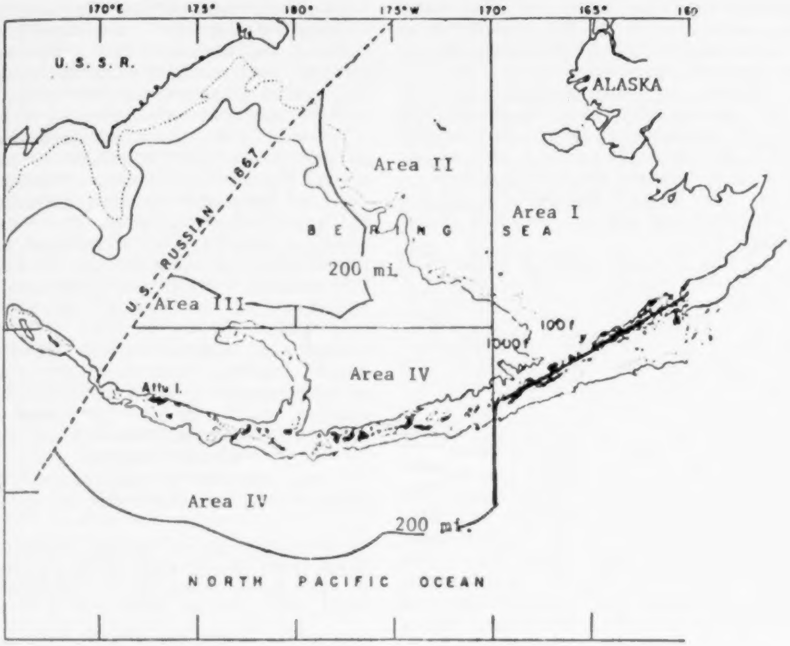

170°E
175°
180°
175°W
170°
165°
160
U.S.S.R.
ALASKA
60°
55°
50°
U.S.-RUSSIAN 1867
Area II
Area I
BERING SEA
200 mi.
Area III
100f
100f
Area IV
Attu I.
Area IV
200 mi.
NORTH PACIFIC OCEAN

Figure 1. Bering Sea and Aleutian Islands Management Area

(a) Bering Sea sub-area are areas I, II, and III.
(b) Aleutian Islands sub-area is area IV.

Bycatch limitation zone 1 (Zone 1) means that part of the Bering Sea Subarea that is south of 58°00′ N. latitude and east of 165°00′ W. longitude (areas A and B in Figure 2).

Bycatch limitation zone 2 (Zone 2) means that part of the Bering Sea Subarea bounded by straight lines connecting the following coordinates in the order listed (area C in Figure 2):

North latitude	West longitude
54°30′	165°00′
58°00′	165°00′
58°00′	171°00′
60°00′	171°00′
60°00′	179°20′
59°25′	179°20′
54°30′	167°00′
54°30′	165°00′

Directed fishing, with respect to any species, stock, or other aggregation of fish, means fishing that is intended or can reasonably be expected to result in the catching, taking or harvesting of quantities of such fish and amount to 20 percent or more of the catch, take, or harvest, or to 20 percent or more of the total amount of fish or fish products on board at any time. It will be a rebuttable presumption that, when any species, stock, or other aggregation of fish comprises 20 percent or more of the catch, take, or harvest, or

20 percent or more of the total amount of fish or fish products on board at any time, such fishing was directed fishing for such fish.

Fishery, for the purposes of this part, means all fishing for groundfish which is conducted in the Bering Sea and Aleutian Islands management area and adjacent territorial waters.

(a) The Bering Sea subarea of the fishery means areas I, II, and III of Figure 1.

(b) The Aleutian Islands subarea of the fishery means area IV of Figure 1.

Fishing year means the period of time beginning at 0901 GMT (0001 Alaska Standard Time) on January 1 and ending at 0900 GMT on January 1 (2400 Alaska Standard Time on December 31).

Groundfish means pollock, cod, any species of flatfish, Pacific ocean perch, other rockfish, sablefish, Atka mackerel, squid, octopus; all other marine invertebrates except shrimp, scallops, snails, king crab, Tanner crab, Dungeness crab, horsehair crab, lyre crab, coral, and clams; and all other finfish except salmonids, Pacific herring, and Pacific halibut. The scientific names of these species are as follows:

Pollock means *Theragra chalcogramma;*
Cod means *Gadus macrocephalus;*
Arrowtooth flounder means *Atheresthes stomias;*
Other flatfish means Pleuronectiformes (order) not specifically defined;
Yellowfin sole means *Limanda aspera;*
Rock sole means *Lepidopsetta bilineata;*
Flathead sole means *Hippoglossoides elassodon;*
Greenland halibut means *Reinhardtius hippoglossoides;*
Pacific ocean perch means *Sebastes alutus, S. polyspinus, S. aleutianus, S. borealis,* and *S. Zacentrus;*
Atka mackerel means *Pleurogrammus monopterygius;*
Other rockfish means Scorpaenidae (family) not specifically defined;
Sablefish means *Anoplopoma fimbria;*
Squid means sepioid and teuthoid squid;
Octopus means Octopoda, not specifically defined;
Salmonids means of the family Salmonidae;
Pacific halibut means *Hippoglossus stenolepis;*
Pacific herring means *Clupea harengus pallasi.*

Landing means off-loading fish.

Longline means a stationary, buoyed, and anchored line with hooks or pots (other than king or Tanner crab pots) attached, or the taking of fish by means of such a device.

Processing, or *to process*, means the preparation of fish to render it suitable for human consumption, industrial uses, or longterm storage, including, but not limited to, cooking, canning, smoking, salting, drying, freezing, and rendering into meal or oil. Heading and gutting, without additional preparation, is not "processing" under this definition.

Regional Director means Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, or an individual to whom the Regional Director has delegated appropriate authority.

Trawl means a bag-shaped net dragged through the water to capture fish.

[46 FR 63307, Dec. 31, 1981, as amended at 50 FR 46075, Nov. 6, 1985; 52 FR 8600, Mar. 19, 1987; 52 FR 11993, Apr. 14, 1987; 53 FR 24655, 24660, June 29, 1988]

EFFECTIVE DATE NOTE: In § 675.2, the definitions of "bycatch limitation zones 1 and 2", added at 52 FR 8600, Mar. 19, 1987, expire on December 31, 1988.

§ 675.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) For regulations concerning the conservation of halibut, see the regulations of the International Halibut Commission at Part 301 of this title. For regulations governing fishing for groundfish in the Gulf of Alaska, see Part 672 of this chapter; and for permits and certificates of inclusion for the taking of marine mammals, see § 216.24 of this title.

[53 FR 24659, June 29, 1988]

§ 675.4 Permits.

(a) *General.* No vessel of the United States may fish for groundfish in the Bering Sea and Aleutian Islands management area without first obtaining a permit issued under this part. Such permits shall be issued without charge.

(b) *Application.* The vessel permit required under paragraph (a) of this section may be obtained by submitting to the Regional Director a written application containing the following information:

(1) The vessel owner's name, mailing address, and telephone number;

(2) The name of the vessel;

(3) The vessel's U.S. Coast Guard documentation number or State registration number;

(4) The home port of the vessel;

(5) The type of fishing gear to be used;

(6) The length and net tonnage of the vessel;

(7) The hull color of the vessel;

(8) The names of all operators and/or lessees of the vessel;

(9) Whether the vessel is to be used in fish harvesting, in which case the type of fishing gear to be used must be specified; or for support operations, including the receipt of fish from U.S. vessels at sea; and

(10) The signature of applicant.

(c) *Issuance.* (1) Except as provided in Subpart D of 15 CFR Part 904, upon receipt of a properly completed application, the Regional Director will issue a permit required by paragraph (a) of this section.

(2) Upon receipt of an incomplete or improperly completed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(d) *Notification of change.* (1) Except as provided in paragraph (d)(2) of this section, any person who has applied for and received a permit under this section must give written notification of any change in the information provided under paragraph (b) of this section to the Regional Director within 30 days of the date of that change.

(2) A permit issued under this section will authorize either harvesting or support operations, but not both. The notification to the Regional Director under paragraph (d)(1) of this section of a change in the type of operations in which that vessel is to engage must be completed before that vessel begins the new type of operation.

(e) *Duration.* A permit will continue in full force and effect through December 31 of the year for which it was issued, or until it is revoked, suspended, or modified under Part 621 (Civil Procedures) of this chapter.

(f) *Alteration.* No person may alter, erase, or mutilate any permit issued under this section. Any such permit that has been intentionally altered, erased, or mutilated will be invalid.

(g) *Transfer.* Permits issued under this section are not transferable or assignable. Each such permit will be valid only for the vessel for which it is issued. The Regional Director must be notified of a change in ownership, pursuant to paragraph (d) of this section.

(h) *Inspection.* Any permit issued under this section must be carried aboard the vessel whenever the vessel is fishing for groundfish in the Bering Sea and Aleutian Islands management area. The permit must be presented for inspection upon request of any authorized officer.

(i) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

[46 FR 63307, Dec. 31, 1981, as amended at 49 FR 1044, Jan. 6, 1984; 50 FR 46075, 46076, Nov. 6, 1985]

§ 675.5 Recordkeeping and reporting.

(a) *Fishing vessel reporting requirements*—(1) The operator of any fishing vessel (including any catcher/processor vessel) to which a permit has been issued under § 675.4 of this part, that catches groundfish in the Bering Sea and Aleutian Islands management area or either subarea, the territorial sea adjacent to either subarea, or internal waters of the State of Alaska, will be responsible for the submission to ADF&G of an accurately completed State of Alaska fish ticket or an equivalent document containing all of the information required on an Alaska fish ticket. Fish tickets are not required for groundfish sold or delivered to a foreign processing vessel which has a permit under § 611.3 of this title.

(i) *When to submit fish tickets*—(A) *Sales or deliveries to shore.* Except as provided by paragraph (a)(1)(ii) of this section, the operator of any fishing vessel who sells or delivers his catch of groundfish to shore must submit the fish ticket required under paragraph (a)(1) of this section within one week after such fish are sold or delivered.

(B) *Sales or deliveries to vessels.* Except as provided by paragraph (a)(1)(ii) of this section, the operator of any fishing vessel who sells or delivers his catch of groundfish to another vessel must submit the fish ticket required under paragraph (a)(1) of this section within one week after he returns to port.

(ii) At the election of the fishing vessel operator who catches groundfish, fish tickets may be prepared, and submitted under paragraph (a)(1)(i)(A) of this section to ADF&G by the shore-based purchaser within one week after such fish are received by the purchaser, or, if submitted under paragraph (a)(1)(i)(B) of this section, to ADF&G by the vessel-based purchaser within one week after such purchaser returns to shore. For purposes of this paragraph, a "purchaser" is any person who receives from a fishing vessel regulated under this part, groundfish caught in either subarea of the Bering Sea and Aleutian Islands management area, the territorial sea, or internal waters of the State of Alaska.

(2) *Address.* Send these documents to the Director, Commercial Fish Division, Alaska Department of Fish and Game Headquarters, P.O. Box 3-2000, Juneau, Alaska 99802.

(3) *Catcher/processor and mothership/processor vessels.* The operator of any fishing vessel to which a permit has been issued under § 675.4 of this Part processing (as defined in § 675.2 of this Part) any groundfish on board that vessel must, in addition to the requirements of paragraphs (a)(1) and (a)(2) of this section, meet the following requirements:

(i) Before starting and upon stopping fishing or receiving groundfish in any area, the operator of that vessel must notify the Regional Director of the date and hour in Greenwich Mean Time (GMT) and the area of such activity.

(ii) When shifting operations to a new area, the operator of that vessel must notify the Regional Director of the date and hour in GMT of beginning fishing or receiving groundfish in the new area and the position of the new fishing activity. The notice must be sent to the Regional Director within 48 hours of shifting.

(iii) The notices required in paragraphs (a)(3) (i) and (ii) should be sent by private or commercial communications facilities to the U.S. Coast Guard at Juneau, Alaska, who will relay them to the Regional Director. Only if adequate private or commercial communications facilities have not been successfully contacted may the required notices be delivered via the closest Coast Guard communications station.

(iv) *Catch/receipt and product transfer report.* After notification of starting fishing by a vessel under paragraph (a)(3)(i) of this section, and continuing until that vessel's entire catch or cargo of fish has been offloaded, the operator of that vessel must submit a weekly catch/receipt and product transfer report, including reports of zero tons caught or received, for each weekly period, Sunday through Saturday, GMT, or for each portion of such a period. The catch/receipt and product transfer report must be sent to the Regional Director within one week of the end of the reporting period through such means as the Regional Director will prescribe upon issuing that vessel's permit under § 675.4 of this Part. This report must contain the following information:

(A) Name and radio call sign of vessel;

(B) Federal permit number for the Bering Sea and Aleutian Islands fisheries;

(C) Month and days fished or during which fish were received at sea;

(D) The estimated round weight of all fish caught or recieved at sea by that vessel during the reporting period by species or species group, rounded to the nearest one-tenth of a metric ton (0.1 mt), whether retained, discarded, or off-loaded;

(E) The number of cartons of fish product, and the estimated unit net weight, in kilograms or pounds, of the carton of processed fish by species or species group produced by that vessel during the reporting period;

(F) The area in which each species or species group was caught;

(G) If any species or species groups were caught in more than one area during a reporting period, the estimated round weight of each, to the nearest 0.1 mt, by area;

(H) The product weight, rounded to the nearest one-tenth of a metric ton (0.1 mt) and the number of cartons transferred or offloaded by product type and by species or species group.

(v) *Cargo transfer/offloading log.* For each transfer or offloading of fish product in the EEZ, outside the EEZ, within any State's territorial waters, or within the internal waters of any State, the operator of each regulated fishing vessel must record, in a separate transfer log, the following information within twelve hours of the completion of the transfer or offloading:

(A) The time and date (GMT) and location (in geographic coordinates or if within a port, the name of the port) the transfer or offloading began and was completed;

(B) The product weight and product type, by species or species group, of all fish products transferred or offloaded to the nearest one-tenth of a metric ton (0.1 mt);

(C) The name and permit number of the vessel receiving the product or, if to a shoreside location, the name of the location and commercial facility receiving the product; and

(D) The intended port of destination of the receiving vessel if transferred to another vessel.

(b) *Processor reporting requirements.* When requested by the Regional Director, but not more than four times a year, each U.S. fish processor who intends to process U.S.-harvested groundfish taken in the Bering Sea and Aleutian Islands management area shall complete a written survey received from the Regional Director to include the following information:

(1) The quantity of groundfish that the processor has the capacity to process during the following six-month period; and

(2) The quantity of U.S.-harvested groundfish from the Bering Sea and Aleutian Islands management area that the processor expects to process during the following six-month period.

[46 FR 63307, Dec. 31, 1981, as amended at 50 FR 46075, 46076, Nov. 6, 1985; 52 FR 8600, Mar. 19, 1987; 52 FR 49022, Dec. 29, 1987; 53 FR 7761, Mar. 10, 1988; 53 FR 24656, June 29, 1988]

§ 675.6 [Reserved]

§ 675.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for groundfish in the Bering Sea and Aleutian Islands management area with a vessel of the United States which does not have aboard a valid permit issued under § 675.4 of this part.

(b) Conduct of any fishing contrary to any notice of inseason adjustment issued under § 675.20(e) of this part.

(c) Until Januaray 1, 1989, it is unlawful for any person to use a vessel to:

(1) Conduct any fishing contrary to a notice issued under § 675.21 of this part;

(2) Fish with trawl gear in Area B (Figure 2) unless specifically allowed by the Secretary under § 675.22 of this part;

(3) Fish with trawl gear in Area B at any time when no approved data gathering program exists or after such a program has been terminated; or

(4) Fish with trawl gear in Area B without complying fully with an approved data gathering program.

[53 FR 24659, June 29, 1988]

§ 675.8 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 675.9 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

Subpart B—Management Measures

§ 675.20 General limitations.

(a) *OY, TAC, Reserve, DAH, and TALFF*—(1) *Optimum yield.* The optimum yield (OY) for the fishery regulated by this section and by 50 CFR § 611.93 is a range of 1.4 to 2.0 million mt for target species and the "other species" category in the Bering Sea and Aleutian Islands management area, to the extent this amount can be harvested consistently with this part and 50 CFR Part 611, plus the amounts of "nonspecified species" taken incidentally to the harvest of target species and the "other species" category. The species categories are defined in Table 1 of this section.

TABLE 1—1986 INITIAL TOTAL ALLOWABLE CATCH (TAC), DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), RESERVE, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), IN THE BERING SEA (BS) AND THE ALEUTIAN ISLANDS AREA (AI), OR BOTH, ALL IN METRIC TONS. TAC=0.15 TAC+DAP+JVP+TALFF; Initial TAC=0.85 TAC=DAP+JVP+TALFF

Species	Species code	Areas	TAC [1]	DAH	DAP	JVP	TALFF
Pollock	701	BS	1,200,000	831,755	141,775	690,000	188,245
		AI	100,000	28,843	18,039	10,804	56,157
Pacific ocean perch	780	BS	825	770	576	194	55
		AI	6,800	6,800	6,340	460	50
Rockfish	849	BS	825	791	648	143	50
		AI	5,800	5,800	5,791	9	50
Sablefish	703	BS	2,250	2,072	1,826	246	95
		AI	4,200	4,167	4,159	40	50
Pacific cod	702		229,000	164,224	133,394	50,830	32,406
Yellowfin sole	720		209,500	128,330	1,030	127,300	49,745
Greenland turbot	721		33,000	10,414	5,414	5,000	17,636
Arrowtooth flounder	118		20,000	3,472	1,805	1,667	13,528
Other flatfish	129		124,200	93,742	4,192	89,550	11,828
Atka mackerel			30,800	30,800	10	30,790	50
Squid			5,000	60	10	50	4,210
Other species			27,800	7,110	110	7,000	16,520

[1] Fifteen percent of the TAC, or 300,000 mt, is apportioned to the initial operational reserve; of this, 29,857 mt is apportioned to JVP and TALFF, effective January 1, 1986; the remaining reserve is 270,143 mt.

(2) *TAC.* The Secretary, after consultation with the North Pacific Fishery Management Council (Council), will specify the total allowable catch (TAC) for each calendar year for each target species and for the "other species" category. The sum of the TACs established must be within the OY range of 1.4-2.0 million mt for target species and the "other species" category.

(i) The annual determination of the TAC for each target species and the "other species" category, the exceeding of these species' TACs through the apportionment of reserves, and the reapportionment of surplus domestic annual harvest (DAH) to total allowable level of foreign fishing (TALFF) will be based upon and be consistent with two types of information:

(A) Biological condition of groundfish stocks as set forth in the resource assessment documents prepared annually for the Council. These documents will provide information on historical catch trend; updated estimates of the maximum sustainable yield of the groundfish complex and its component species groups; assessments of the stock condition of each target species and the "other species" category; assessments of the multi-species and ecosystem impacts of harvesting the groundfish complex at current levels given the assessed condition of stocks, including consideration of rebuilding depressed stocks; and alternative harvesting strategies and related effects on the component species group.

(B) Socioeconomic considerations that are consistent with the goals of the fishery management plan for the groundfish fishery of the Bering sea and Aleutian Islands area, including the need to promote efficiency in the utilization of fishery resources, including minimizing costs; the need to manage for the optimum marketable size of a species; the impact of groundfish harvests on prohibited species and the domestic target fisheries which utilize these species; the desire to enhance depleted stocks; the seasonal access to the groundfish fishery by domestic fishing vessels; the commerical importance of a fishery to local communities; the importance of a fishery to subsistence users; and the need to promote utilization of certain species.

(3) *Reserve.* Fifteen percent of the TAC for each target species and the "other species" category is automatically placed in a reserve, and the remaining 85 percent of the TAC for each target species and the "other species" category is apportioned between DAH and TALFF. The reserve is not designated by species or species group and any amount of the reserve may be apportioned to a target species or the "other species" category provided that such apportionments are consistent with paragraph (a)(2)(i) of this section and do not result in overfishing of a target species or the "other species" category.

(4) *DAH.* (i) The initial amounts for the two components of DAH, i.e., expected domestic annual processing (DAP) and U.S. harvest authorized for delivery to foreign processors (JVP), will be determined each year by the Regional Director. The DAP and JVP amounts for each target species and for the "other species" category equals the actual DAP and JVP of the previous year plus any additional amounts the Regional Director projects will be used by the U.S. fishing industry during the coming fishing year. This projection will be based upon the latest reliable information that is available, including industry surveys, market data, and stated intentions by representatives for the U.S. fishing industry.

(ii) The DAH for the "nonspecified species" category equals the amount of that category caught during the fishing year while harvesting the DAH for the target species and "other species" categories.

(5) *TALFF.* The TALFF for each target species and for the "other species" category at the beginning of the fishing year is 85 percent of each TAC minus DAH. The TALFF for the "nonspecified species" category equals the amount caught during the fishing year while harvesting the TALFF for the target species and "other species" categories.

(6) *Notices.* As soon as is practicable after October 1 of each year, the Secretary, after consultation with the Council, will publish a notice in the Federal Register specifying preliminary TAC, Reserve, DAP, JVP, and TALFF amounts for each target species and for the "other species" category for the next calendar year. Public comment on these amounts will be accepted by the Secretary for a period of 30 days after the amounts have been published in the Federal Register. The Secretary will consider all timely comments when determining, after consultation with the Council, the final annual TAC, initial DAH, and initial TALFF for each target species and the "other species" category for the next year. These figures will be published as a notice in the Federal Register as soon as practicable after December 15 and made available to the public through other suitable means by the Regional Director.

(7) When the Regional Director determines that the amount of the TAC of any target species or of the "other species" category remaining during the fishing year is necessary for bycatch in fisheries for other groundfish species during the remaining fishing year, the Secretary will publish a notice in the Federal Register prohibiting directed fishing for that species or the "other species" category for the remainder of the fishing year.

(8) When the Regional Director determines that the TAC of any target species or of the "other species" category has been achieved prior to the end of the fishing year, the Secretary will publish a notice in the Federal Register requiring that species or the "other species" category are to be treated in the same manner as prohibited species, as described in § 675.20(c)

of this part, for the remainder of the fishing year.

(9) If the Regional Director determines that directed fishing for groundfish other than the species for which the TAC is achieved, as determined under paragraph (a)(8) of this section, may lead to overfishing of this species, the Secretary will, in the notice required by that paragraph, also limit such directed fishing for other groundfish by any method, including area closures, gear restrictions or prohibition of directed fishing, that will prevent overfishing of the species for which the TAC is achieved.

(10) When making the determinations specified under paragraphs (a) (7), (8), and (9) of this section, the Regional Director will consider allowing fishing to continue or resume with certain gear types or in certain areas and times based on findings of:

(i) The risk of biological harm to groundfish for which the TAC will be or has been achieved;

(ii) The risk of socioeconomic harm to authorized users of the groundfish for which the TAC will be or has been achieved; and

(iii) The negative effect of prohibitions or restrictions authorized under paragraphs (a) (7), (8), and (9) of this section on the socioeconomic well-being of other domestic fisheries.

(b) *Apportioning the reserve, surplus DAH, and JVP*—(1) *Dates*—(i) *Reserve to DAH and TALFF.* As soon as practicable after April 1, June 1, and August 1, and on such other dates as he determines appropriate, the Secretary will by notice apportion to DAH and TALFF all or part of the reserve in accordance with paragraphs (a)(3) and (b)(2) of this section. The Secretary will apportion to DAH the amount of reserve that he finds will be harvested by U.S. vessels during the remainder of the year and will apportion to TALFF the remaining portion of the reserve that will not be apportioned to DAH, except that part or all of the reserve may be withheld if an apportionment would adversely affect the conservation of groundfish resources or prohibited species.

(ii) *Apportionment between DAP and JVP.* As soon as practicable after April 1, June 1, and August 1, and on such other dates as he determines appropriate, the Secretary will, by notice in the FEDERAL REGISTER, reassess and reapportion to JVP the part of DAP that he determines will not be harvested by U.S. vessels and delivered to U.S. processors during the remainder of the fishing year, unless such reapportionments to JVP would adversely affect the conservation of groundfish or prohibited species or would have an adverse impact on the socioeconomic considerations set forth in paragraph (a)(2)(i)(B) of this section.

(iii) *DAH to TALFF.* As soon as practicable after April 1, June 1, and August 1, and on such other dates as he determines appropriate, the Secretary will, by notice, reassess and reapportion to TALFF the part of DAH that he determines will not be harvested by U.S. vessels during the remainder of the fishing year, unless such reapportionments to TALFF would adversely affect the conservation of groundfish or prohibited species or would have an adverse impact on the socioeconomic considerations set forth in paragraph (a)(2)(i)(B) of this section.

(2) *Procedure.* (i) The Secretary will provide all interested persons an opportunity to comment on the proposed apportionments or retentions under paragraph (b)(1) of this section before such apportionments or retentions are made, unless he finds that there is good cause for not providing a prior comment opportunity, and publishes the reasons therefor in the notice of apportionment and/or retention. No apportionment or retention may take effect until it has been published in the FEDERAL REGISTER as a notice with a statement of the findings upon which the apportionment or retention is based. Comments provided for in this paragraph must be received by the Secretary not later than 5 days before April 1, June 1, and August 1, or other dates that may be specified. If the Secretary determines for good cause that a notice of apportionment and/or retention must be issued without providing interested persons a prior opportunity for public comment, comments on the apportionment or retention will be received for a period of 15 days after its effective date. The

Secretary will consider all timely comments in deciding whether to make a roposed apportionment or retention or to modify an apportionment or retention that has previously been made, and shall publish responses to those comments in the FEDERAL REGISTER as soon as practicable.

(ii) Comments provided for in paragraphs (a)(6) and (b)(2)(i) of this section should be addressed to Director, AK Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802. The Regional Director will make available to the public during business hours the aggregate data upon which any preliminary TAC, DAH, or TALFF figure is based or the data upon which any apportionment or retention of surplus DAH or reserve was or is proposed to be based at the National Marine Fisheries Service Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska. These data will be available for a sufficient period to facilitate informed comment by interested persons.

(3) *Seasonal apportionment of JVP pollock.* The initial amount of pollock apportioned to JVP for each subarea in accordance with paragraph (a)(4) of this section will be divided into two parts.

(i) Part One will be 40 percent of the following sum: initial JVP plus 15 percent of the TAC for pollock. The JVP pollock harvest during the first period (defined in paragraph (b)(3)(iii) of this section) resulting from directed fishing and bycatch in fisheries for other groundfish species will be counted against Part One. When the Regional Director determines that the unharvested amount of Part One is necessary for bycatch in JVP fisheries for other groundfish species during the first period, the Secretary will publish a notice in the FEDERAL REGISTER prohibiting directed JVP fishing for pollock for the remainder of the first period. Any amount of pollock in addition to Part One necessary for bycatch in JVP fisheries for other groundfish species during the first period will be counted against Part Two.

(ii) Part Two will be any unharvested portion of Part One plus the pollock JVP remaining after the first period and as adjusted by reapportionments from reserve and DAP in accordance with paragraphs (b) (1) and (2) of this section. When the Regional Director determines that the unharvested amount of Part Two is necessary for bycatch in JVP fisheries for other groundfish species during the second period, the Secretary will publish a notice in the FEDERAL REGISTER prohibiting JVP directed fishing for pollock for the remainder of the second period.

(iii) *JVP pollock season.* For purposes of this paragraph, the first period is that portion of the fishing year beginning January 15 and ending April 15. The second period is that portion of the fishing year beginning April 16 and ending December 31.

(c) *Prohibited species.* (1) Prohibited species, for the purpose of this part, means any of the species of Pacific salmon (*Oncorhynchus* spp.), steelhead trout (*Salmo gairdneri* or *Parasalmo mykiss*), Pacific halibut (*Hippoglossus stenolepis*), Pacific herring (*Clupea harengus pallasi*), king crab (*Paralithodes* spp. and *Lithodes* spp.), and Tanner crab (*Chionoecetes* spp.) caught by a vessel regulated under this part while fishing for groundfish in the Bering Sea and Aleutian Islands management area, unless retention is authorized by other applicable law, including the regulations of the International Pacific Halibut Commission.

(2) The operator of each vessel regulated under this part must minimize its catch of prohibited species.

(3) The operator of each vessel regulated under this part must sort its catch as soon as possible after retrieval of the catch and, after allowing for sampling by an observer (if any), must return any catch of prohibited species or parts thereof to the sea immediately with a minimum of injury regardless of its condition.

(4) It will be a rebuttable presumption that any prohibited species found onboard a fishing vessel regulated under this part was caught and retained in violation of this section.

(d) The Secretary of Commerce will make appropriate arrangements to place observers aboard U.S. trawl vessels operating in the Winter Halibut Savings Area from December 1 through May 31. The Winter Halibut Savings Area is bounded by straight lines connecting the following coordinates in the order listed:

Latitude	*Longitude*
54°36′ N.	164°55′42″ W. (Cape Sarichef Light)
54°48′ N.	170°00′ W.
55°30′ N.	170°00′ W.
55°30′ N.	166°47′ W.
56°00′ N.	167°45′ W.
56°00′ N.	166°00′ W.
56°30′ N.	166°00′ W.
56°30′ N.	163°00′ W.
55°16′ N.	166°10′ W.
54°36′ N.	164°55′42″ W.

(e) *Inseason adjustments.* (1) Inseason adjustments issued by the Secretary include:

(i) The closure, extension, or opening of a season in all or part of a management area:

(ii) Modification of the allowable gear to be used in all or part of a management area; and

(iii) The adjustment of TACs or PSC limits.

(2) Any inseason adjustment taken under this paragraph must be based on a determination that such adjustments are necessary to prevent:

(i) The overfishing of any species or stock of fish or shellfish: or

(ii) The harvest of a TAC for any groundfish species, the taking of a PSC limit for any prohibited species, or the closure of any fishing for groundfish based on a TAC or PSC limit which on the basis of the best available scientific information is found by the Secretary to be incorrectly specified.

(3) The selection of the appropriate inseason management adjustments under paragraph (e)(1) (i) or (ii) of this section must be from the following authorized management measures and be based on an adjustment selected which is the least restrictive necessary to achieve the purpose of the adjustment:

(i) Any gear modification that would protect the species in need of conservation protection, but which would allow fisheries to continue for other species; or

(ii) A time-area closure which would allow fisheries for other species to continue in noncritical areas and time periods; or

(iii) Closure of a management area to all groundfish fishing for the remainder of the fishing year.

(4) The adjustment of a TAC or PSC limit for any species under paragraph (e)(1)(iii) of this section must be based on the best available scientific information concerning the biological stock status of the species in question and on the Regional Director's determination that the currently specified TAC or PSC limit is incorrect. Any adjustment to a TAC or PSC limit must be reasonably related to the change in biological stock status.

(f) *Data.* All information relevant to one or more of the following factors may be considered in making the required determinations under paragraph (e)(2) of this section:

(1) The effect of overall fishing effort within a regulatory area;

(2) Catch per unit of effort and rate of harvest;

(3) Relative abundance of stocks within the area;

(4) The condition of the stock within all or part of a regulatory area;

(5) Economic impacts on fishing businesses being affected; and

(6) Any other factors relevant to the conservation and management of groundfish species or any incidentally-caught species which are designated as a prohibited species or for which a PSC limit has been specified.

(g) *Procedure.* (1) No inseason adjustment issued under paragraph (e) of this section may take effect until:

(i) The Secretary has filed the proposed adjustment with the Office of the Federal Register for public inspection; and

(ii) The Secretary has published the proposed adjustment for public comment for a period of thirty (30) days before it is made final, unless the Secretary finds for good cause that such notice and public comment is impracticable, unnecessary or contrary to the public interest.

(2) If the Secretary decides, for good cause, that an adjustment is to be made without affording a prior opportunity for public comment, public comments on the necessity for, and extent of, the adjustment will be received by the Regional Director for a

period of fifteen (15) days after the effective date of the notice.

(3) During any such 15-day period, the Regional Director will make available for public inspection, during business hours, the aggregate data on which an adjustment was based.

(4) If written comments are received during any such 15-day period which oppose or protest an inseason adjustment issued under this section, the Secretary will reconsider the necessity for the adjustment and, as soon as practicable after that reconsideration, will either:

(i) Publish in the FEDERAL REGISTER a notice of continued effectiveness of the adjustment, responding to comments received; or

(ii) Modify or rescind the adjustment.

(5) Notices of inseason adjustments issued by the Secretary under this paragraph (g) must include the following information:

(i) A description of the management adjustment;

(ii) The reasons for the adjustment and the determinations required by this part; and

(iii) The effective date and any termination date of the management adjustment. If no termination date is specified, the adjustment will terminate on the last day of the fishing year.

[46 FR 63307, Dec. 31, 1981, as amended at 49 FR 400, Jan. 4, 1984; 49 FR 2472, Jan. 20, 1984; 50 FR 46076, Nov. 6, 1985; 51 FR 959, Jan. 9, 1986; 52 FR 8600, Mar. 19, 1987; 52 FR 11993, Apr. 14, 1987; 52 FR 13375, Apr. 22, 1987; 52 FR 45969, Dec. 3, 1987]

EFFECTIVE DATE NOTE: At 52 FR 45969, Dec. 3, 1987, § 675.20 was amended by adding paragraph (b)(3), effective December 30, 1987 through December 31, 1989.

EFFECTIVE DATE NOTE: Section 675.21, added at 52 FR 8601, Mar. 19, 1987, expires December 31, 1988.

§ 675.21 Prohibited species catch (PSC) limitations.

(a) Tanner crab (*C. bairdi*). (1) If, during the fishing year, the Regional Director determines that vessels of the United States will catch the PSC limit of 80,000 *C. bairdi* Tanner crabs while conducting directed fishing for yellowfin sole and "other flatfish" in Zone 1 (area A in Figure 2), he will publish a notice in the FEDERAL REGISTER prohibiting a directed fishery in Zone 1 by vessels of the United States for yellowfin sole and "other flatfish" for the remainder of the fishing year, subject to paragraph (d) of this section.

(2) If, during the fishing year, the Regional Director determines that vessels of the United States will catch the PSC limit of 326,000 *C. bairdi* Tanner crabs while conducting directed fishing for yellowfin sole and "other flatfish" in Zone 2 (area C in Figure 2), he will publish a notice in the FEDERAL REGISTER prohibiting a directed fishery in Zone 2 by vessels of the United States for yellowfin sole and "other flatfish" for the remainder of the fishing year, subject to paragraph (d) of this section.

(b) Red king crab. If, during the fishing year, the Regional Director determines that vessels of the United States will catch the PSC limit of 135,000 red king crabs while conducting directed fishing for yellowfin sole and "other flatfish" in Zone 1 (area A in Figure 2), he will publish a notice in the FEDERAL REGISTER prohibiting a directed fishery in Zone 1 by vessels of the United States for yellowfin sole and "other flatfish" for the remainder of the fishing year, subject to paragraph (d) of this section.

(c) *Pacific halibut.* If, during the fishing year, the Regional Director determines that vessels of the United States will catch the PSC limit of 828,000 Pacific halibut while conducting directed fishing for yellowfin sole and "other flatfish" in the Bering Sea and Aleutian Islands management area for delivery to floating foreign processors, he will publish a notice in the FEDERAL REGISTER prohibiting directed fishing in Zone 1 for yellowfin sole and "other flatfish" by such vessels for the remainder of the fishing year, subject to paragraph (d) of this section.

(d) When the fishing vessels of the United States to which a PSC limit applies have caught an amount of prohibited species equal to that PSC limit (but less than an amount which would constitute over fishing), the Secretary may allow some or all of those vessels to continue or resume directed fishing for yellowfin sole and "other flatfish" under conditions which will limit fishing by permissible gear, areas, times, and other appropriate factors, and subject to other provisions of this part. Such other factors may include delivery of a vessel's catch to U.S. fish processors. In authorizing and conditioning such continued or resumed directed fishing by those vessels, the Secretary will take into account the following considerations:

(1) A determination by the Regional Director of the risk of biological harm to Pacific halibut, Tanner and king crab stocks and of socioeconomic harm to authorized halibut and crab users posed by authorizing

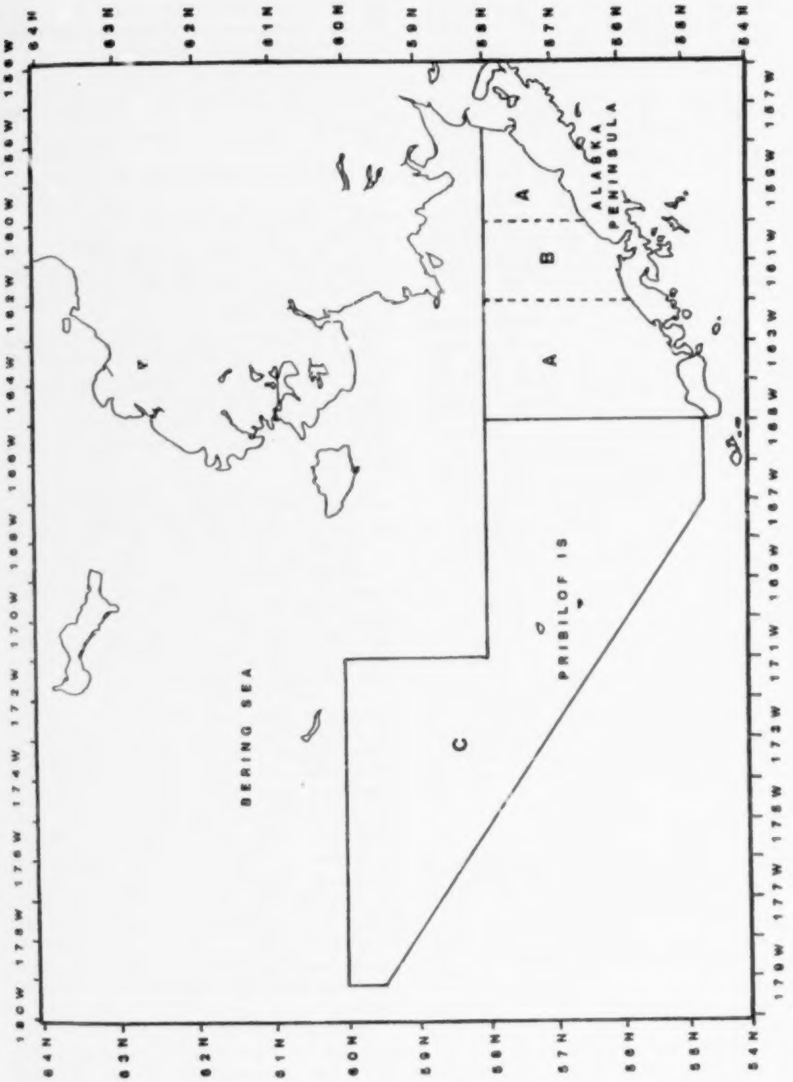
continued or resumed directed fishing for yellowfin sole and "other flatfish":

(2) A determination by the Regional Director of the extent of incidental catches of Pacific halibut, Tanner and king crabs in specific areas;

(3) A determination by the Regional Director of the accuracy of the estimates of incidental catches of Pacific halibut, Tanner and king crabs:

(4) A determination by the Regional Director that adherence to the prescribed conditions can be assured in light of available enforcement resources; and

(5) A determination by the Regional Director that continued or resumed directed fishing for yellowfin sole and "other flatfish" will not lead to overfishing of prohibited species.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179 W
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B
A
C
PRIBILOF IS
BERING SEA

FIGURE 2

A. Zone 1 area defined at § 675.2
B. Closed area defined at § 675.22(a)
C. Zone 2 area defined at § 675.2

[52 FR 8601, Mar. 19, 1987]

Effective Date Note: Section 675.22, added at 52 FR 8604, Mar. 19, 1987, expires December 31, 1988.

§ 675.22 Time and area closures.

(a) No fishing with trawl gear is allowed at any time in that part of Zone 1 in the Bering Sea subarea that is south of 58° 00′ N. latitude, east of 162° 00′ W. longitude and west of 160° 00′ W. longitude (area B in Figure 2).

(b) The Secretary may allow fishing for Pacific cod with trawl gear in that portion of the area described in paragraph (a) of this section that lies south of a straight line connecting the coordinates 56° 43′ N. latitude, 160° 00′ W. longitude, and 56° 00′ N. latitude, 162° 00′ W. longitude, provided that such fishing is in accordance with a data-gathering program, approved by the Regional Director after consultation with the Council, designed to provide data useful in the management of the trawl fishery, the Pacific halibut, Tanner crab and king crab fisheries, and which will be monitored to prevent overfishing of the Pacific halibut, Tanner and king crab stocks in the area.

(c) The owner or operator of each vessel which fishes in Area B under an approved data gathering program must agree with the Secretary to comply with all requirements of that program.

(d) If the Regional Director determines that vessels fishing with trawl gear in the area described in paragraph (a) of this section will catch the PSC limit of 12,000 red king crabs, he will immediately close all fishing with trawl gear in that area by notice in the Federal Register and will make reasonable attempts to notify all parties to each agreement referred to in paragraph (c) of this section, that the program has terminated.

[52 FR 8604, Mar. 19, 1987]

PART 676—KING CRAB FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

Subpart A—General Measures

Sec.
676.1 Purpose and scope.
676.2 Definitions.
676.3 Relation to other laws.
676.4 Permits.
676.5 Prohibitions.
676.6 Facilitation of enforcement.
676.7 Penalties.

Subpart B—Management Measures

676.20 Initial implementation of the FMP.
676.21 New State laws and regulations.
676.22 Reconsideration of a final notice by the Secretary.
676.23 Amendment of the FMP.
676.24 Reservation of Secretarial authority to supersede or supplement.

Authority: 16 U.S.C. 1801 *et seq.*

Source: 49 FR 45002, Nov. 14, 1984, unless otherwise noted.

Subpart A—General Measures

§ 676.1 Purpose and scope.

(a) Regulations in this part govern fishing for king crab by vessels of the United States within the Bering Sea and Aleutian Islands area.

(b) Subject to the other provisions of this part, the State of Alaska is delegated authority to implement its role described in the Fishery Management Plan for the King Crab Fishery of the Bering Sea and Aleutian Islands Area (FMP).

(c) Subject to other requirements of law, this part takes effect upon receipt by the Secretary of a statement signed by the Governor of the State of Alaska accepting the provisions of this part on behalf of the State and identifying the agencies that will exercise the authority to implement the FMP delegated by paragraph (b) of this section (designated agency).

§ 676.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Bering Sea and Aleutian Islands area means those waters outside the State of Alaska lying south of the Bering Strait and east of the U.S.-U.S.S.R. Convention line of 1867, and extending south of the Aleutian islands for 200 miles between the Convention line and 164°47′30″ W. longitude.

Council means the North Pacific Fishery Management Council, 411 West Fourth Avenue, Suite D, Anchorage, AK 99510, telephone 907-274-4563.

Designated agency means one or more agencies designated by the Governor of the State of Alaska under § 676.1(c) of this part.

Fishery management plan (FMP) means the Fishery Management Plan for the King Crab Fishery of the Bering Sea and Aleutian Island Area.

King crab means the following species of the family Lithodidae:

(a) *Paralithodes camtschatica*, red king crab;

(b) *Paralithodes platypus*, blue king crab; and

(c) *Lithodes aequispina*, brown or golden king crab.

Regional Director means the Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802, telephone 907-586-7221.

[49 FR 45002, Nov. 14, 1984, as amended at 53 FR 24655, June 29, 1988]

§ 676.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraphs (b) and (c) of this section.

(b) *Federal law.* For regulations governing fishing by vessels of the United States for halibut, see regulations of the International Pacific Halibut Commission at 50 CFR Part 301; for those governing fishing for groundfish off Alaska, see 50 CFR Parts 672 and 675; for those governing salmon fishing off Alaska, see 50 CFR 674; for those governing fishing for Tanner crab, see 50 CFR Part 671; and for those governing permits and certificates of inclusion for the taking of marine mammals, see 50 CFR Part 216.

(c) *State law.* Each law and regulation of the State of Alaska approved by NOAA under this part will be proposed for incorporation by reference in the FEDERAL REGISTER in accordance with 1 CFR Part 51. Those State laws and regulations that are approved by the Director of the Federal Register for incorporation by reference under 1 CFR Part 51 will be listed at § 676.25. Other laws and regulations of the State that are approved by NOAA under this part will be reprinted in the FEDERAL REGISTER. Laws of the State of Alaska that may be approved by NOAA under this part are codified in Title 16 of the *Alaska Statutes.* Regulations of the State of Alaska that may be approved by NOAA under this part are codified in Title 5 of the *Alaska Administrative Code.* Copies of these laws and regulations may be obtained from the Alaska Department of Fish and Game, Commercial Fisheries Division, P.O. Box 3-2000, Juneau, AK 99802, telephone 907-465-4210.

[49 FR 45002, Nov. 14, 1984, as amended at 53 FR 24655, June 29, 1988]

§ 676.4 Permits.

(a) *General.* No vessel of the United States may fish for king crab in the Bering Sea and Aleutian Islands area without first obtaining a permit issued under this section. Each such permit will be issued without charge.

(b) *Application.* A vessel owner may obtain a permit required under the preceding subsection by submitting to the Regional Director a written application containing the following information:

(1) The applicant's name, mailing address, and telephone number;

(2) The name of the vessel;

(3) The vessel's U.S. Coast Guard documentation number or State registration number;

(4) The home port of the vessel;

(5) The length of the vessel;

(6) The type of fishing gear to be used; and

(7) The signature of the applicant.

The Regional Director may accept a completed State of Alaska commercial fishing license application in satisfaction of the requirements of this subsection.

(c) *Issuance.* (1) Upon receipt of a properly completed application, the Regional Director will issue the permit required by paragraph (a) of this section.

(2) Upon receipt of an incomplete or improperly completed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(d) *Notification of change.* Any person who has applied for and received a permit under this section must give written notification of any change in the information provided under paragraph (b) of this section to the Regional Director within 30 days of the date of that change.

(e) *Duration.* A permit issued under this section authorizes the permitted vessel to fish for king crab in the Bering Sea and Aleutian Islands area during a single specified year, and continues in full force and effect through December 31 of the year for which it was issued, or until it is revoked, suspended, or modified under 15 CFR Part 904 Civil Procedures).

(f) *Alteration.* No person may alter, erase, or mutilate any permit issued under this section. Any such permit that has been intentionally altered, erased, or mutilated will be invalid.

(g) *Transfer.* Permits issued under this section are not transferable or assignable. Each such permit is valid only for the vessel for which it is issued. The Regional Director must be notified of a change in ownership under paragraph (d) of this section.

(h) *Inspection.* Any permit issued under this section must be carried aboard the vessel whenever the vessel is fishing for king crab in the Bering Sea and Aleutian Island area. The permit must be presented for inspection upon request of any authorized officer.

(i) *Sanctions.* Subpart D of 15 CFR Part 904 (Civil Procedures) governs the imposition of permit sanctions against a permit issued under this section. As specified in that Subpart D, a permit may be revoked, modified, or suspended if the permitted vessel is used in the commission of an offense prohibited by the Magluson Act or this part; and such a permit must be revoked if a civil penalty or criminal fine imposed under the Magnuson Act and pertaining to a permitted vessel is not paid.

(Approved under OMB control number 0648-0097)

[49 FR 45002, Nov. 14, 1984, as amended at 49 FR 47006, Nov. 30, 1984]

§ 676.5 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for king crab in the Bering Sea and Aleutian Islands area, except as allowed by this part, or the laws and regulations of the State of Alaska approved under this part at the time such fishing occurs.

(b) Fish for king crab in the Bering Sea and Aleutian Islands area without, or in violation of, a valid permit issued under this part.

[49 FR 45002, Nov. 14, 1984, as amended at 53 FR 24659, June 29, 1988]

§ 676.6 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 676.7 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

Subpart B—Management Measures

§ 676.20 Initial implementation of the FMP.

After promulgation of this part, the Secretary will publish in the Federal Register a notice of approval which specifies the laws and regulations of the State of Alaska governing fishing for king crab in the Bering Sea and Aleutian Islands area then in effect that he finds to be inconsistent with the FMP; declares that the laws and regulations so specified cease to govern fishing for king crab in the Bering Sea and Aleutian Islands area by any vessel, whether or not it is registered under the laws of the State of Alaska; declares that all laws and regulations of the State of Alaska governing fishing for king crab in the Bering Sea and Aleutian Islands area then in effect that are not so specified are approved under this part and govern all fishing for king crab in the Bering Sea and Aleutian Islands area by any vessel, whether or not it is registered under the laws of the State of Alaska; and states the findings and conclusions upon which the Secretary's action is based. The Secretary will not publish the notice provided for in this section until interested persons have been afforded a period of at least 45 days in which to comment on laws and regulations of the State of Alaska governing fishing for king crab in the Bering Sea and Aleutian Islands area then in effect and the consistency of those laws and regulations with the

FMP. The statement of findings and conclusions contained in the notice published under this section must respond to the comments received during this period. The Secretary will publish the notice provided for in this section after he has consulted with Council concerning his action and the findings and conclusions upon which it is based.

§ 676.21 New State laws and regulations.

(a) *New State laws.* (1) Within 30 days after final enactment of a law of the State of Alaska governing fishing for king crab in the Bering Sea and Aleutian Islands area that was not in effect when the notice provided for in § 676.20 of this part was published, the Secretary will publish in the FEDERAL REGISTER a notice requesting comments by any interested person on that law and whether it is consistent with the FMP. Interested persons will have the opportunity to submit comments for a period of at least 45 days after publication of the notice requesting comments.

(2) Within 120 days after final enactment of a law referred to in paragraph (a)(1) of this section, and after consultation with the Council, the Secretary will publish in the FEDERAL REGISTER a notice of approval which—

(i) Specifies any provision of that law that he finds to be inconsistent with the FMP;

(ii) Declares that any provision so specified does not govern fishing for king crab in the Bering Sea and Aleutian Islands area by any vessel, whether or not it is registered under the laws of the State of Alaska;

(iii) Declares that all provisions of that law which are not so specified are approved under this part and will govern all fishing for king crab in the Bering Sea and Aleutian Islands area by any vessel, whether or not it is registered under the laws of the State of Alaska; and

(iv) States the findings and conclusions upon which the Secretary's action is based, responding to comments received under the notice provided for in paragraph (a)(1) of this section.

(3) A law referred to in paragraph (a)(1) of this section will govern fishing for king crab in the Bering Sea ald Aleutian Islands area by any vessel registered under the laws of the State of Alaska, until the Secretary publishes the notice provided for in paragraph (a)(2) of this section. If a law or regulation of the State of Alaska that was previously approved under this part conflicts with a law governing fishing for king crab in the Bering Sea and Aleutian Islands area under this paragraph, the previously approved law or regulation will cease to be approved under this part with respect to vessels registered under the laws of the State of Alaska. When the Secretary publishes a notice under paragraph (a)(2) of this section disapproving the conflicting provisions of the new law, the previously approved law or regulation will once again be considered approved under this part with respect to vessels registered under the laws of the State of Alaska.

(b) *New State regulations.* (1) As soon as practicable after the designated agency of the State of Alaska publishes for public comment a proposed regulation governing fishing for king crab in the Bering Sea and Aleutian Islands area that was not in effect when the notice provided for in § 676.20 of this part was published, the Secretary will publish in the FEDERAL REGISTER a notice requesting comments by any interested person on that proposal and whether it is consistent with the FMP. The notice will require that such comments be submitted to the designated agency in accordance with the agency's administrative procedures. It will explain that the Secretary will determine whether any such proposed regulation that may be adopted by that agency is consistent with the FMP on the basis of the administrative record developed before that agency.

(2) Within 45 days after the adoption by the designated State agency of a proposed regulation referred to in paragraph (b)(1) of this section and after consultation with the Council, the Secretary will publish in the FEDERAL REGISTER a notice of approval which—

(i) Specifies any provision of that regulation that he finds to be inconsistent with the FMP;

(ii) Declares that any provisions so specified do not govern fishing for king crab in the Bering Sea and Aleutian Islands area by any vessel, whether or not it is registered under the laws of the State of Alaska;

(iii) Declares that all provisions of that regulation that are not so specified are approved under this part and govern all fishing for king crab in the Bering Sea and Aleutian Islands area by any vessel, whether or not it is registered under the laws of the State of Alaska; and

(iv) States the findings and conclusions upon which the Secretary's action is based. The statement of findings and conclusions contained in the notice published under this paragraph will be based upon the administrative record developed before the designated agency of the State of Alaska and will respond to relevent points raised in comments submitted to that agency on the proposed regulation.

(3) A regulation referred to in paragraph (b)(1) of this section may govern fishing for king crab in the Bering Sea and Aleutian Islands area by any vessel registered under the laws of the State of Alaska, until the Secretary publishes the notice provided for in paragraph (b)(2) of this section. If a regulation of the State of Alaska that was previously approved under this part conflicts with a regulation governing fishing for king crab in the Bering Sea and Aleutian Islands are under this paragraph, the previously approved regulation will cease to be approved under this part with respect to vessels registered under the laws of the State of Alaska. When the Secretary publishes a notice under paragraph (b)(2) of this section disapproving the conflicting provisions of the new regulation, the previously approved regulation will once again be considered approved under this part with respect to vessels registered under the laws of the State of Alaska.

(4) As soon as practicable after the designated agency of the State of Alaska adopts, without opportunity for public comment, a regulation establishing an inseason management measure or emergency action governing fishing for king crab in the Bering Sea and Aleutian Islands area that was not in effect when the notice provided for in § 676.20 of this part was published, the Secretary will publish in the FEDERAL REGISTER a notice of approval having the content prescribed for a notice published under paragraph (b)(2) of this section. A regulation referred to in this paragraph may govern fishing for king crab in the Bering Sea and Aleutian Islands area by vessels registered under the laws of the State of Alaska until the Secretary publishes the notice provided for in this paragraph. If a regulation of the State of Alaska that was previously approved under this part conflicts with a regulation governing fishing for king crab in the Bering Sea and Aleutian Islands area under the second sentence of this paragraph, the previously approved regulation will cease to be approved under this part with respect to vessels registered under the laws of the State of Alaska. When the Secretary publishes a notice provided for in this paragraph disapproving the conflicting provisions of the new regulation, the previously approved regulation will once again be considered approved under this part with respect to vessels registered under the laws of the State of Alaska.

§ 676.22 Reconsideration of a final notice by the Secretary.

Within ten days after publication in the FEDERAL REGISTER of a notice of final action by the Secretary under § 676.20 or 676.21 of this part, any person may request the Secretary to reconsider and change that action. The request will specify the proposed change in the action, and the reasons that change is believed to be necessary. The request will not be considered to have been made until it has been received at the address specified in the notice of the action. Within 30 days after publication of the notice of final action in the FEDERAL REGISTER, the Secretary will grant or deny all requests for reconsideration of that action that have been made, and will promptly publish a notice of such grant or denial in the FEDERAL REGISTER.

§ 676.23 Amendment of the FMP.

The procedures of §§ 676.20 and 676.22 for initial review and approval of existing laws and regulations of the State of Alaska will be repeated upon each implementation of any amendment of the FMP.

§ 676.24 Reservation of Secretarial authority to supersede or supplement.

The Secretary, after consultation with the Council, may promulgate and amend such other regulations as may be necessary to implement the FMP fully, in accordance with other requirements of law. This includes regulations superseding or supplementing any State law or regulation disapproved under §§ 676.20, 676.21, or 676.22 of this part.

PART 680—WESTERN PACIFIC PRECIOUS CORALS

Subpart A—General Provisions

Sec.

680.1 Purpose and scope.
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AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 48 FR 39231, Aug. 30, 1983, unless otherwise noted.

Subpart A—General Provisions

§ 680.1 Purpose and scope.

(a) The purpose of this part is to implement the Precious Coral Fishery Management Plan developed by the Western Pacific Fishery Management Council under the Magnuson Act.

(b) These regulations govern fishing for precious coral by fishing vessels of the United States within the exclusive economic zone seaward of Hawaii, Guam, and American Samoa and the U.S. Pacific Island possessions of Johnson Atoll, Kingman Reef, and Palmyra, Wake, Jarvis, Howland, and Baker Islands..

(c) For regulations governing fishing for precious coral by foreign vessels, see 50 CFR 611.82.

[48 FR 39231, Aug. 30, 1983, as amended at 53 FR 24660, June 29, 1988; 53 FR 27521, July 21, 1988]

§ 680.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Dead coral means any precious coral that contains holes from borers or is discolored or encrusted at the time of removal from the seabed.

Land or landing means bringing fish to shore or off-loading fish from a vessel.

Live coral means any precious coral that is free of holes from borers, and has no discoloration or encrustation on the skeleton at the time of removal from the seabed.

Management area means the EEZ of the United States seaward of the State of Hawaii, the Territory of Guam, the Territory of American Samoa, and the U.S. Pacific Island possessions of Johnson Atoll, Kingman Reef, and Palmyra, Wake, Jarvis, Howland, and Baker Islands.

Non-precious coral means any species of coral other than those listed under the definition for *precious coral.*

Non-selective gear means any gear used for harvesting corals that cannot discriminate or differentiate between types, size, quality, or characteristics of living or dead corals.

Permit area is used to describe each precious coral bed in the management area. Each bed is designated by a permit area code and assigned to one of the following four categories:

(a) *Established beds. Makapuu* (Oahu), *Permit Area E-B-1,* includes the area within a radius of 2.0 nautical miles of a point at 21°18.0′ N. latitude, 157°35.5′ W. longitude.

(b) *Conditional beds.* (1) *Ke-ahole Point* (Hawaii), *Permit Area C-B-1,* includes the area within a radius of 0.5 nautical miles of a point at 19°46.0′ N. latitude, 156°06.0′ W. longitude.

(2) *Kaena Point* (Oahu), *Permit Area C-B-2,* includes the area within a radius of 0.5 nautical miles of a point at 21°35.4′ N latitude, 158°22.9′ W. longitude.

(3) *Brooks Bank, Permit Area C-B-3,* includes the area within a radius of 2.0 nautical miles of a point at 24°06.0′ N. Latitude, 166°48.0′ W. longitude.

(4) *180 Fathom Bank, Permit Area C-B-4,* N.W. of Kure Atoll, includes the area within a radius of 2.0 nautical miles of a point at 28°50.2′ N. latitude, 178°53.4′ W. longitude.

(c) *Refugia. Westpac Bed, Permit Area R-1,* includes the area within a radius of 2.0 nautical miles of a point at 23°18.0′ N. latitude, 162°35.0′ W. longitude.

(d) *Exploratory areas.* (1) *Permit Area X-P-H* includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of the State of Hawaii.

(2) *Permit Area X-P-AS* includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of American Samoa.

(3) *Permit Area X-P-G* includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of Guam.

(4) Permit Area X-P-PI includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of the U.S. Pacific Island possessions.

Precious coral means any coral of the genus *Corallium* in addition to the following species of corals:

Pink coral (also known as red coral), *Corallium secundum*
Pink coral (also known as red coral), *Corallium regale*
Pink coral (also known as red coral), *Corallium laauense*
Gold coral, *Gerardia sp.*
Gold coral, *Callogorgia gilberti*
Gold coral, *Narella sp.*
Gold coral, *Calyptrophora sp.*
Bamboo coral, *Lepidisis olapa*
Bamboo coral, *Acanella sp.*
Black coral, *Antipathes dichotoma*
Black coral, *Antipathes grandis*
Black coral, *Antipathes ulex*

Regional Director means the Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731, or a designee.

Selective gear means any gear used for harvesting corals that can discriminate or differentiate between type, size, quality, or characteristics of living or dead corals.

U.S.-harvested coral means coral caught, taken, or harvested by vessels of the United States within any fishery for which a fishery management plan has been implemented under the Magnuson Act.

[48 FR 39231, Aug. 30, 1983, as amended at 53 FR 24655, June 29, 1988; 53 FR 27521, 27523, July 21, 1988]

§ 680.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) This part recognizes that any State law pertaining to vessels registered under the laws of that State, including any State landing laws, which is consistent with the Precisous Coral Management Plan, will continue to have force and effect respecting fishing activities addressed in this part.

[48 FR 39231, Aug. 30, 1983, as amended at 53 FR 24655, June 29, 1988]

§ 680.4 Permits.

(a) *General.* (1) Any vessel of the United States fishing for, taking, or retaining precious coral in the management area must have a permit issued under this section.

(2) Each permit will be valid for fishing only in the permit area specified in the permit. Permit areas are described in § 680.2.

(3) No more than one permit will be valid for any one vessel at any one time.

(4) No more than one permit will be valid for any one person at any one time.

(5) The holder of a valid permit to fish one permit area may obtain a permit to fish another permit area only upon surrendering to the Regional Director any current permit issued under this section.

(b) *Applications.* (1) An application for a permit under this section must be submitted to the Regional Director by the vessel owner or operator at least 60 days prior to the date on which the applicant desires to have the permit made effective.

(2) Each applicant must supply the following information to the Regional Director when applying for a permit. Each application must be signed by the vessel owner or operator and contain the following information:

(i) The applicant's name, mailing address, and telephone number;

(ii) The owner's name, mailing address, and telephone number;

(iii) The operator's name, mailing address, and telephone number;

(iv) The name of the vessel;

(v) The vessel's U.S. Coast Guard documentation number or State license number;

(vi) The radio call sign of the vessel;

(vii) The home port of the vessel;

(viii) The engine horsepower of the vessel;

(ix) The approximate fish-hold capacity of the vessel;

(x) The type and quality of fishing gear used by the vessel;

(xi) The permit area in which the applicant proposes to fish;

(xii) Whether the application is for a new permit or a renewal; and

(xiii) The number and expiration date of any prior permit for the vessel issued under this section.

(c) *Fees.* No fee is required for a permit under this section.

(d) *Change in application information.* Any change in the information specified in paragraph (b) of this section must be reported to the Regional Director ten days prior to the effective date of the change.

(e) *Issuance.* (1) Within 60 days after receipt of a properly completed application the Regional Director will determine whether to issue a permit.

(2) If an incomplete or improperly completed permit application is filed, the Regional Director will notify the applicant in writing of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* Permits issued under this section expire on June 30 following the effective date of the permit.

(g) *Renewal.* An application for a renewal of a permit must be submitted to the Regional Director in the same manner as described in paragraph (b) of this section.

(h) *Alteration.* Any permit which has been substantially altered, erased, or mutilated is invalid.

(i) *Replacement.* Permits may be issued to replace lost or mutilated permits. An application for a replacement permit will not be considered a new application.

(j) *Transfer.* Permits issued under this section are not transferable or assignable to other persons. A permit is valid only for the vessel for which it is issued.

(k) *Display.* Any permit issued under this section must be on board the vessel at all times while the vessel is fishing for coral in the EEZ. Any permit issued under this section must be displayed for inspection upon request of any authorized officer.

(l) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

[48 FR 39231, Aug. 30, 1983, as amended at 49 FR 1044, Jan. 6, 1984; 53 FR 27523, July 21, 1988]

§ 680.5 Recordkeeping and reporting.

(a) *Logbook.* The operator of any fishing vessel fishing for precious coral subject to this part must—

(1) Maintain on board the fishing vessel, while fishing for precious coral, an accurate and complete fishing logbook in the required format supplied by the Regional Director, recording all information specified in paragraph (b) of this section with all information entered by midnight of the day following the day on which the coral was taken;

(2) Make the fishing logbook available for inspection by an authorized officer or any employee of the National Marine Fisheries Service designated

by the Regional Director to make such inspection;

(3) Within 72 hours of each landing of precious coral, submit to the Regional Director a copy of the log sheet(s) pertaining to that precious coral.

(b) *Information.* Fishing logbooks must contain the following information for all precious coral taken under this part:

(1) *Vessel information.*

(i) Name of vessel;

(ii) Call sign of vessel; and

(iii) Permit number of vessel.

(2) *Fishing information.*

(i) Date of harvest;

(ii) Fishing effort in hours;

(iii) Method of harvest;

(iv) Area fished;

(v) Depth of water;

(vi) Weight of coral harvested, by species, to the nearest tenth of a kilogram (landed weight, air dried for at least 24 hours); and

(vii) Observations that may be made about the habitat (current, bottom type, bottom topography, bottom slope, proximity to land, etc.).

(3) *Sale information.*

(i) Amount of coral sold (by species);

(ii) Sale price;

(iii) Date of sale;

(iv) Name(s) and address(es) of buyer(s); and

(4) Any other information specified in the permit.

[48 FR 39231, Aug. 30, 1983, as amended at 53 FR 27523, July 21, 1988]

§ 680.6 Vessel identification.

(a) *Permit number.* Each fishing vessel subject to this part must display its permit number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft.

(b) *Numerals.* The permit number must be affixed to each vessel subject to this part in block Arabic numerals at least 14 inches in height for fishing vessels of 65 feet in length or longer and at least ten inches in height for all other vessels. Markings must be legible and of a color that contrasts with the background.

(c) *Duties of operator.* The operator of each fishing vessel subject to this part must—

(1) Keep the displayed permit number legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging or its fishing gear obstructs the view of the permit number from an enforcement vessel or aircraft.

§ 680.7 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(1) Use any vessel to fish for, take, or retain precious coral in the management area unless a permit has been issued for that vessel and area as specified in § 680.4 and that permit is on board the vessel.

(2) Fish for, take, or retain any species of precious coral in the management area:

(i) By means of gear or methods prohibited by § 680.25;

(ii) In refugia specified in § 680.24;

(iii) In a bed for which the quota specified in § 680.21 has been attained; or

(iv) In violation of any permit issued under § 680.4.

(3) Take and retain or possess on fishing vessels any pink coral from the Makapuu Bed (Permit Area E-B-1), Keahole Point Bed (Permit Area C-B-1), or Kaena Point Bed (Permit Area C-B-2) which is less than the minimum height specified in § 680.23.

(4) Falsify or fail to make, keep, maintain, or submit any logbook or other record or report required by § 680.5.

(5) Fail to affix and maintain vessel markings, as required by § 680.6.

(b) It is a rebuttable presumption that any precious coral found on board a fishing vessel in the management area was caught and retained in violation of this part. The presumption can be rebutted by showing that—

(1) A valid permit was issued for the vessel, which was operating under the terms of the permit, or

(2) The coral originated outside the management area through receipts of purchase, invoices, or other documentation.

[48 FR 39231, Aug. 30, 1983, as amended at 53 FR 24659, June 29, 1988]

§ 680.8 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 680.9 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

§ 680.10 Experimental fishing permits (EFP).

(a) *General.* The Secretary may authorize the direct or incidental harvest of precious coral managed by the FMP which would otherwise be prohibited in exploratory areas by this part. No experimental fishing may be conducted unless authorized by an experimental fishing permit (EFP) issued by the Secretary to a vessel owner for a specific vessel in accordance with the criteria and procedures specified in this section. EFPs will be issued without charge.

(b) *Application.* An application for an EFP may be submitted by the owner of a vessel or a representative of the owner. An applicant for an EFP shall submit to the Regional Director at least 60 days before the desired effective date of the EFP a written application including, but not limited to, the following information:

(1) The date of the application;

(2) The applicant's name, mailing address, and telephone number;

(3) A statement of the purposes and goals of the experiment for which an EFP is needed, including a general description of the arrangements for disposition of all species harvested under the EFP;

(4) A statement of whether the proposed experimental fishing has broader significance than the applicant's individual goals;

(5) For each vessel to be covered by the EFP:

(i) Vessel name;

(ii) Name, address, and telephone number of owner and master;

(iii) U.S. Coast Guard documentation, State license, or registration number;

(iv) Home port;

(v) Length of vessel;

(vi) Net tonnage;

(vii) Gross tonnage;

(viii) Radio call sign;

(ix) Engine horsepower; and

(x) Approximate fish hold capacity.

(6) A description of the species (directed and incidental) to be harvested under the EFP and the amount(s) of such harvest necessary to conduct the experiment;

(7) For each vessel covered by the EFP, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used; and

(8) The signature of the applicant.

The Secretary may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected in writing.

(c) *Issuance.* (1) If an application contains all of the required information, the Secretary will publish a notice of receipt of the application in the FEDERAL REGISTER with a brief description of the proposal, and will give interested persons an opportunity to comment. The Secretary will also forward copies of the application to the Western Pacific Fishery Management Council, the U.S. Coast Guard, and the fishery management agency of the affected State(s).

(2) At a Western Pacific Fishery Management Council meeting following receipt of a complete application, the Secretary will consult with the Council, the U.S. Coast Guard, and the Director of the affected State(s) fishery management agency concerning the permit application. The applicant will be notified in advance of the meeting at which the application will be considered, and invited to appear in support of the application if the applicant desires.

(3) Within 5 working days after the consultation in paragraph (c)(2) of this section, or as soon as practicable thereafter, the Secretary shall notify the applicant in writing of the decision to grant or deny the EFP, and, if denied, the reasons for the denial.

Grounds for denial of an EFP include, but are not limited to, the following:

(i) The applicant has failed to disclose information or has made false statements as to any material fact, in connection with his or her application; or

(ii) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect any species of fish, including precious coral, in a significant way; or

(iii) Issuance of the EFP would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose; or

(iv) Activities to be conducted under the EFP would be inconsistent with the intent of this section or the management objectives of the FMP; or

(v) The applicant has failed to demonstrate a valid justification for the permit; or

(vi) The activity proposed under the EFP would create a significant enforcement problem.

(4) The Secretary will publish a notice in the FEDERAL REGISTER announcing the decision to grant or deny an EFP. If the permit is granted, the FEDERAL REGISTER notice will describe the experimental fishing to be conducted under the EFP. The Secretary will attach terms and conditions to the EFP consistent with the purpose of the experiment to ensure consistency with the FMP and to ensure that the experiment does not undermine efforts to conserve and manage the resource. Terms and conditions may include, but are not limited to, the following:

(i) The maximum amount of each species which can be harvested and landed during the term of the EFP, including trip limits, where appropriate;

(ii) The number, sizes, names, and identification numbers of the vessels authorized to conduct fishing activities under the EFP;

(iii) The time(s) and place(s) where experimental fishing may be conducted;

(iv) The type, size, and amount of gear which may be used by each vessel operated under the EFP;

(v) The condition that observers be carried aboard vessels operated under an EFP;

(vi) Data reporting requirements, including a requirement to report periodically and at the termination of the permit, the amount of each species that was harvested; and

(vii) Such other conditions as may be necessary to ensure consistent with the purposes of the EFP compliance with the FMP, including the objectives to generate new information needed for resource management and to prevent overfishing and waste of the resource.

(d) *Duration.* The effective period of the permit will be specified by the Secretary in the terms of the EFP. An EFP may be renewed by following the application procedures in this section.

(e) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(f) *Transfer.* EFPs issued under this part are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.

(g) *Inspection.* Any EFP issued under this part must be carried aboard the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(h) *Surrender.* Upon issuance of an EFP the applicant must surrender to the Regional Director any permit to fish for precious coral that was issued under § 680.4 of this part.

(i) *Sanctions.* Failure of the holder of an EFP to comply with the terms and conditions of an EFP, the provisions of Subpart B of this part, any other applicable provision of this part, the Magnuson Act, or any other regulation promulgated under this Act, will be grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP for enforcement reasons will be governed by 15 CFR Part 904 Subpart D.

(j) *Permit modification.* Where circumstances have changed such that a permittee desires to modify any term or condition of an EFP, the permittee must submit, to the Regional Director, a written request which provides full justification and supporting information for the proposed modification. Such applications for modification are subject to the same issuance criteria as are original applications, as provided in paragraph (c) of this section. Modifications to an EFP which are of a technical nature only and do not affect the substance of the fishing activity authorized by the EFP may be approved by the Regional Director without the notice and consultation provided for in paragraphs (c) (1) and (2) of this section.

(k) *Appeals of administrative action.* (1) Except as provided in Subpart D of 15 CFR Part 904, an applicant for a permit or a permit holder may appeal the denial or conditioning of a permit under § 680.10 to the Assistant Administrator for Fisheries, NOAA. In order to be considered by the Assistant Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefor, and must be submitted within 30 days of the action(s) by the Regional Director. The appellant may request an informal hearing on the appeal.

(2) Upon receipt of an appeal authorized by this section, the Assistant Administrator may request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Assistant Administrator will decide the appeal in accordance with the criteria set out in this part, as appropriate, based upon information relative to the application on file at the NMFS and the Western Pacific Fishery Management Council and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in paragraph (k)(3) of this section, and such other considerations as deemed appropriate. The Assistant Administrator will notify all interested persons of the decision, and the reason(s) therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(3) If a hearing is requested, or if the Assistant Administrator determines that one is appropriate, the Assistant Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place and subject matter of the hearing in the FEDERAL REGISTER. A hearing will normally be held no later than 30 days following publication of the notice in the FEDERAL REGISTER unless the hearing officer extends the time for reasons deemed equitable. The appellant and, at the discretion of the hearing officer, other interested persons, may appear personally or by counsel at the hearing and submit such material and present such arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Assistant Administrator.

(4) The Assistant Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Assistant Administrator will notify interested persons of the decision, and the reason(s) therefor, in writing within 30 days of receipt of the hearing officer's recommended decision. The Assistant Administrator's action shall constitute final action for the agency for the purposes of the Administrative Procedure Act.

(5) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Assistant Administrator for good cause, either upon his or her own motion or upon written request from the appellant stating the reason(s) therefor.

(l) *Protected species.* Vessels fishing under an EFP are required to report any incidental take of, or fisheries interaction with, protected species in the fishing logbook described in § 680.5. As required by that section, copies of logbook sheets must be submitted to the Regional Director within 3 days of arriving in port.

[53 FR 27521, July 21, 1988]

Subpart B—Management Measures

§ 680.20 Seasons.

The fishing year for precious coral begins on July 1 and ends on June 30 the following year, except at the Makapuu Bed, which has a two-year fishing period that begins July 1 and ends June 30 two years later.

§ 680.21 Quotas.

(a) The quotas limiting the amount of precious coral that may be taken in the management area during the fishing year are listed in Table 1 of this section. Only live coral is counted toward the quota. The accounting period for all quotas begins July 1, 1983.

TABLE 1—QUOTAS FOR PERMIT AREAS

Name of coral bed	Type of bed	Harvest quota [a]	Number of years	Gear restrictions [d]
Makapuu	Established	Pink coral—2,000 kg.	2	S
		Gold coral—600 kg.	2	S
		Bamboo coral—600 kg.	2	S
Ke-ahole Point	Conditional	Pink coral—67 kg.	1	S
		Gold coral—20 kg.	1	S
		Bamboo coral—17 kg.	1	S
Kaena Point	Conditional	Pink coral—67 kg	1	S
		Gold coral—20 kg	1	S
		Bamboo coral—17 kg.	1	S
Brooks Bank [b]	Conditional	Pink coral [b]—17 kg.	1	N
		Gold coral—133 kg.	1	N
		Bamboo coral—111 kg.	1	N
180 Fathom Bank [b]	Conditional	Pink coral [b]—222 kg.		N
		Gold coral—67 kg.	1	N
		Bamboo coral—56 kg.	1	N
Westpac Bed	Refugia	Zero (0 kg)		[e]
Hawaii, American Samoa, Guam, U.S. Pacific Island possessions	Exploratory [c]	1,000 kg (all species combined except black corals) per area.	1	N

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[a] There are no restrictions under this part on the harvest of black corals, except the data submission requirements (§ 680.5). State regulations on black coral harvesting are not superseded by this part.

[b] Only 1/5 the indicated amount is allowed if nonselective gear is used, that is the nonselective harvest will be multiplied by 5 and counted against the quota. If both selective and nonselective methods are used, the bed will be closed when $S+5N=Q$, where S = selective harvest amount, N = nonselective harvest amount and Q = total harvest quota, for any single species on that bed.

[c] Only selective gear may be used in the EEZ seaward of the main Hawaiian Islands; i.e., south and east of a line midway between Ninoa and Nihau Islands. Nonselective gear or selective gear may be used in all other portions of exploratory areas.

[d] S = Selective gear only; N = Nonselective or selective gear.

[e] No authorized fishing for coral.

(b) *Conditional bed closure.* A conditional bed will be closed to all nonselective coral harvesting after the quota for one species of coral has been taken.

(c) *Reserves and reserve release.* The quotas for exploratory areas will be held in reserve for harvest by vessels of the United States in the following manner:

(1) At the start of the fishing year, the reserve for each of the three exploratory areas will equal the quota minus the estimated domestic annual harvest for that year.

(2) As soon as practicable after December 31 each year, the Regional Director will determine the amount harvested by vessels of the United States between July 1 and December 31 of that year.

(3) The Secretary will release to TALFF (the total allowable level of foreign fishing) an amount of precious coral for each exploratory area equal to the quota minus two times the amount harvested by vessels of the United States in that July 1 through December 31 period.

(4) The Secretary will publish in the FEDERAL REGISTER a notice of the Regional Director's determination and a summary of the information on which it is based as soon as practicable after the determination is made.

[48 FR 39231, Aug. 30, 1983, as amended at 53 FR 24659, June 29, 1988; 53 FR 27523, July 21, 1988]

§ 680.22 Closures.

(a) *Determinations of closure and field orders.* If the Regional Director determines that the harvest quota for any coral bed will be reached prior to the end of the fishing year, or of the two-year fishing period at Makapuu bed, the Secretary will issue a field order closing the bed involved by publication of a notice in the FEDERAL REGISTER, and through appropriate news media. Such field order must indicate the reason for the closure, the bed being closed, and the effective date of the closure.

(b) A closure is also effective for a permit holder upon the permit holder's actual harvest of the applicable quota.

§ 680.23 Size restrictions.

Pink coral harvested from the Makapuu bed (E-B-1), the Keahole Point bed (C-B-1), and the Kaena Point bed (C-B-2), must have attained a minimum height of ten inches. There are no size limits for precious coral from other beds or other species.

§ 680.24 Area restrictions.

Fishing for coral on the WestPac bed is not allowed. The specific area closed to fishing is all waters within a 2 nautical mile radius of the midpoint of 23° 18.0′ N. latitude, 162° 35.0′ W. longitude.

§ 680.25 Gear restrictions.

(a) *Selective gear.* Only selective gear may be used to harvest coral from the EEZ of the main Hawaiian Islands, i.e., south and east of a line midway between Niihau and Nihoa Islands.

(b) *Selective or non-selective gear.* Either selective or non-selective gear may be used to harvest coral from Brooks Bank, 180 Fathom Bank, and from exploratory areas other than the EEZ off the main Hawaiian Islands.

[48 FR 39231, Aug. 30, 1983, as amended at 53 FR 24660, June 29, 1988]

§ 680.26 Test fisheries. [Reserved]

PART 681—WESTERN PACIFIC CRUSTACEAN FISHERIES

Subpart A—General Provisions

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Subpart C—Management Measures for Permit Area 2 (the main Hawaiian Islands)

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681.35 Lobster condition.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 681.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP) developed by the Western Pacific Fishery Management Council under the Magnuson Act.

(b) These regulations govern commercial fishing for spiny and slipper lobsters by fishing vessels of the United States within the U.S. EEZ seaward of American Samoa, Guam, and

Hawaii. The management measures specified in Subpart B apply only in the EEZ seaward of the Northwestern Hawaiian Islands (Permit Area 1). The management measures specified in Subpart C apply only in the EEZ seaward of the main Hawaiian Islands (Permit Area 2).

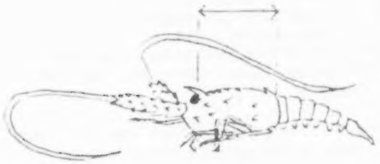
[52 FR 47574, Dec. 15, 1987, as amended at 53 FR 24659, 24660, June 29, 1988]

§ 681.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Carapace length means a measurement in a straight line from the ridge between the two largest spines above the eyes, back to the rear edge of the carapace of a spiny lobster (see Figure 1).

FIGURE 1. METHOD OF MEASURING CARAPACE LENGTH



Closed area means an area of the EEZ that is closed to fishing for lobster.

Commercial fishing means fishing with the intent to sell all or part of the catch of lobsters. All lobster fishing in the Northwestern Hawaiian Islands (Permit Area 1) is considered commercial fishing.

Interested parties means the State of Hawaii Department of Land and Natural Resources, the Western Pacific Fishery Management Council, holders of permits issued under this Part, and any person who has notified the Regional Director of his or her interest in the procedures and decisions described in §§ 681.27 and 681.28 and who has specifically requested to be considered an "interested party".

Kona crab means a crustacean of the species *Ranina ranina*.

Land or Landing means bringing fish to shore or off-loading fish from a fishing vessel.

Management Area means the EEZ of the United States seaward of the Territory of American Samoa, the Territory of Guam, and the State of Hawaii.

Permit Area 1 means the EEZ of the Hawaiian Islands Archipelago lying to the west of 161°0'W. longitude, commonly known as the Northwestern Hawaiian Islands.

Permit Area 2 means the EEZ of the Hawaiian Islands Archipelago lying to the east of 161°00' W. longitude, commonly known as the main Hawaiian Islands;

Permit Area 3 means the EEZ of the Territory of Guam and the EEZ of the Territory of American Samoa.

Permit Number means the number issued to a vessel under this part by the NMFS.

Processing means changing the form of a product through such methods as freezing, cleaning, or removing tails. It does not include the boxing or packaging of a product.

Processor means any person that changes the form of a lobster through such methods as freezing, cleaning, or removing tails. It does not include a person that only boxes or packages lobster or lobster parts. It also does not include a person that catches lobsters and processes them at sea.

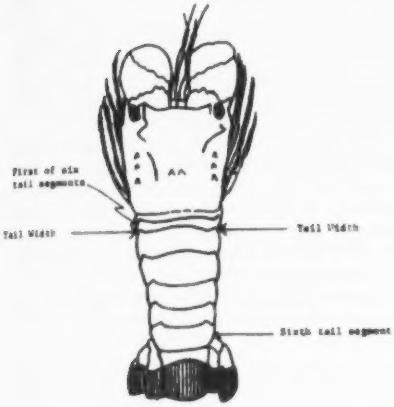
Regional Director means Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731, or a designee.

Slipper lobster means any crustacean of the genus *Scyllaridae*.

Spiny lobster means either of the following two species of crustaceans: *Panulirus marginatus* or *Panulirus penicillatus*.

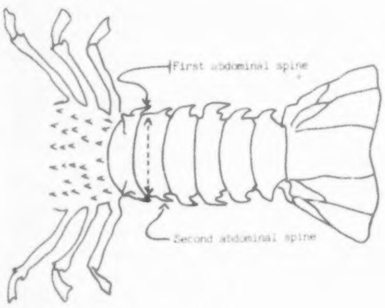
Tail width of slipper lobster means the straight line distance across the tail measured as the widest spot between the first and second tail segments. (See Figure 2).

FIGURE 2. TAIL WIDTH OF SLIPPER LOBSTER



Tail width of spiny lobster means the straight line distance across the tail measured at the widest spot between the first and second abdominal spines (see Figure 3).

Figure 3. Tail Width of Spiny Lobster



Trap means a box-like device used for catching and holding lobsters.

U.S.-harvested lobster means lobster caught, taken, or harvested by vessels of the United States within the Management Area.

[48 FR 5562, Feb. 7, 1983, as amended at 48 FR 52924, Nov. 23, 1983; 51 FR 8508, Mar. 12, 1986; 52 FR 9497, Mar. 25, 1987; 52 FR 47575, Dec. 15, 1987; 53 FR 24655, June 29, 1988]

§ 681.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) Any State law which applies to vessels registered under the laws of that State and which is consistent with this part (including any State landing law) continues in effect with respect to fishing activities covered by this part.

[48 FR 5562, Feb. 7, 1983 as amended at 53 FR 24655, June 29, 1988]

§ 681.4 Permits.

(a) *General.* (1) Any vessel of the United States engaged in commercial fishing for lobsters in the Management Area must have a permit issued under this section.

(2) Each permit is valid for fishing only in the area specified in the permit. Permit areas are defined in § 681.2.

(3) Only one permit issued under this part is valid for one vessel at any one time.

(4) The holder of a permit allowing a vessel to fish one area may obtain a permit for that vessel to fish another area upon surrendering to the Regional Director any current permit issued for that vessel under this part.

(b) *Applications.* (1) An application for a permit under this section must be submitted to the Regional Director by the vessel owner or operator at least 15 days before the date on which the applicant desires to have the permit made effective.

(2) Each application must be submitted on an appropriate form which may be obtained from the Regional Director. Each application must be signed by the vessel owner or operator and contain the following information:

(i) The applicant's name;

(ii) The owner's name, mailing address, and telephone number;

(iii) The operator's name, mailing address, and telephone number;

(iv) The name of the vessel;

(v) The vessel's official number;

(vi) The radio call sign of the vessel;

(vii) The home port of the vessel;

(viii) The engine horsepower of the vessel;

(ix) Date of purchase of the vessel;

(x) The gross registered tons of the vessel;

(xi) The registered length of the vessel;

(xii) The purchase price of the vessel;

(xiii) The age of the vessel;

(xiv) The vessel hold capacity;

(xv) The refrigeration types and capacity;

(xvi) Fuel capacity;

(xvii) Types and amounts of fishing gear employed;

(xviii) The permit area in which the applicant proposes to fish;

(xix) Whether the application is for a new permit or a renewal;

(xx) The number and expiration date of any prior permit for the vessel issued under this part; and

(xxi) Any other fishery management data requested by the Center Director.

(c) *Fees.* No fee is required for a permit under this section.

(d) *Change in application information.* Any change in the information specified in paragraph (b) of this section must be reported to the Regional Director ten days before the effective date of the change.

(e) *Issuance.* (1) Within 15 days after receipt of a properly completed application, the Regional Director will determine whether to issue a permit.

(2) If an incomplete or improperly completed permit application is filed, the Regional Director will notify the applicant in writing of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* Permits issued under this section expire on the June 30 following the effective date of the permit.

(g) *Renewal.* An application for renewal of a permit must be submitted to the Regional Director in the same manner as described in paragraph (b) of this section.

(h) *Alteration.* Any permit that has been substantially altered, erased, or mutilated is invalid.

(i) *Replacement.* Permits may be issued to replace lost or mutilated permits. An application for a replacement permit is not considered a new application.

(j) *Transfer.* Permits issued under this section are not transferable or assignable to other persons. A permit is valid only for the vessel for which it is issued.

(k) *Display.* Any permit issued under this section must be on board the vessel at all times while the vessel is fishing for lobster in the EEZ. Any permit issued under this section must be displayed for inspection upon request of any Authorized Officer.

(l) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

[48 FR 5562, Feb. 7, 1983, as amended at 48 FR 52924, Nov. 23, 1983; 49 FR 1044, Jan. 6, 1984; 52 FR 47575, Dec. 15, 1987]

§ 681.5 Recordkeeping and reporting.

(a) *Reports.* The operator of any vessel engaged in commercial fishing for lobster subject to this part must—

(1) Maintain on board the fishing vessel, while fishing for lobster, an accurate and complete NMFS Daily Lobster Catch Report in English. All information specified in paragraph (b) of this section must be recorded within 24 hours after the completion of the fishing day.

(2) Within 72 hours of each landing of lobsters, submit to the Regional Director the NMFS Daily Lobster Catch Report for that fishing trip.

(3) Maintain an accurate and complete NMFS Trip Processing and Sales Report in which is recorded the information specified in paragraph (c) of this section.

(4) Within 72 hours of each landing of lobsters, submit to the Regional Director the NMFS Trip Processing and Sales Report covering all lobsters that have been sold. For any lobsters that have not been sold within 72 hours of landing, the operator must submit a supplemental NMFS Trip Processing and Sales Report within 72 hours of each subsequent sale of the remaining lobsters.

(5) Make the Daily Lobster Catch Report and the Trip Processing and

Sales Report available for inspection by an authorized officer or any employee of NMFS designated by the Regional Director to make such an inspection.

(b) *Daily Lobster Catch Report.* The Daily Lobster Catch Report must contain the following information for all lobsters taken under this part:

(1) Vessel information—

(i) Name of vessel;

(ii) Permit number of vessel; and

(iii) Size of crew.

(2) Fishing information—

(i) Location of lobster catch by statistical area as depicted in the NMFS Daily Lobster Catch Report form;

(ii) Date and time of trap deployment and number of traps deployed;

(iii) Date and time of trap retrieval and number of traps retrieved;

(iv) Number and species of legal spiny lobsters and number of legal slipper lobsters caught per trap deployment;

(v) Number and species of sublegal spiny lobsters and number of sublegal slipper lobsters caught per trap deployment;

(vi) Number and species of berried female spiny lobsters and number of berried female slipper lobsters caught per trap deployment;

(vii) Number of Kona crabs per trap deployment;

(viii) Number of octopus and other species per trap deployment;

(ix) Transshipment and sales data; and

(x) Any other fishery management data requested by the Center Director.

(3) Endangered species information:

(i) Whether monk seals or sea turtles are observed in the fishing area;

(ii) Whether monk seals or sea turtles are observed in the vicinity of the fishing gear;

(iii) Whether monk seals or sea turtles interfere with fishing operations;

(iv) Whether monk seals or sea turtles prey on released lobsters;

(v) Whether monk seals or sea turtles are entangled but released alive; and

(vi) Whether monk seals or sea turtles are entangled but released dead.

(4) Processing information:

(i) Weight of whole lobsters frozen at sea;

(ii) Weight of lobster tails frozen at sea;

(iii) Weight of whole lobsters to be frozen on land; and

(iv) Weight of lobster tails to be frozen on land.

(5) Sale information:

(i) Number, weight, and revenue from sale of live lobsters;

(ii) Number, weight, and revenue from sale of whole, frozen lobsters;

(iii) Number, weight, and revenue from sale of frozen tails;

(iv) Weight and revenue from sale of lobster byproducts.

(c) *Trip Processing and Sales Report.* The Trip Processing and Sales Report must contain the following information for all lobsters taken under this part:

(1) Vessel information—

(i) Name of vessel; and

(ii) Permit number.

(2) Landing information—

(i) Date of landing; and

(ii) Port of landing.

(3) Processing information—

(i) Weight of whole lobsters frozen at sea;

(ii) Weight of lobster tails frozen at sea;

(iii) Weight of whole lobsters to be frozen on land; and

(iv) Weight of lobster tails to be frozen on land.

(4) Sales information—

(i) Number, weight, and revenue from sale of live lobsters;

(ii) Number, weight, and revenue from sale of whole, frozen lobsters;

(iii) Number, weight, and revenue from sale of frozen lobster tails; and

(iv) Weight and revenue from sale of lobster byproducts.

[48 FR 5562, Feb. 7, 1983, as amended at 48 FR 52924, Nov. 23, 1983; 52 FR 47575, Dec. 15, 1987]

§ 681.6 Vessel identification.

(a) *Permit number.* Each fishing vessel subject to this part must display its permit number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft.

(b) *Numerals.* The permit number must be affixed to each vessel subject to this part in block Arabic numerals at least 18 inches in height for fishing vessels of 65 feet in length or longer, and at least ten inches in height for other vessels. Markings must be legible and of a color that contrasts with the background.

(c) *Duties of operator.* The operator of each fishing vessel subject to this part must—

(1) Keep the displayed permit number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, or its fishing gear obstructs the view of the permit number from an enforcement vessel or aircraft.

[48 FR 52924, Nov. 23, 1983]

§ 681.7 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(1) Use any vessel to fish for lobster in a permit area unless a permit has been issued for that vessel and area as specified in § 681.4, and that permit is aboard the vessel.

(2) Falsify or fail to make, keep, maintain, or submit any logbook or other record or report required by § 681.5.

(3) Fail to affix and maintain vessel markings, as required by § 681.6.

(4) Refuse to carry an observer when requested to do so by the Regional Director under § 681.10.

(5) Fail to provide the 48-hour notice required by § 681.10(b).

(b) In Permit Area 1, in addition to the prohibitions in paragraph (a) of this section, it is unlawful for any person to:

(1) Fish for, take, or retain lobsters:

(i) By methods other than lobster traps or by hand for lobsters, as specified in § 681.24, or

(ii) From closed areas for lobsters, as specified in § 681.23.

(2) Retain or possess on a fishing vessel any lobster or tail which is less than the minimum size specified in § 681.21.

(3) Possess on a fishing vessel any lobster taken in Permit Area 1 in a condition such that its tail width cannot be determined.

(4) Retain or possess on a fishing vessel, or remove the eggs from, any egg-bearing lobster, as specified in § 681.22.

(5) Fail to report before landing, as specified in § 681.25.

(6) Fail to comply with any protective measures promulgated under § 681.26 or § 681.27.

(c) In Permit Area 2, in addition to the prohibitions in paragraph (a) of this section, it is unlawful for any person to—

(1) Fish for, take, or retain lobsters—

(i) By methods other than lobster traps or by hand, as specified in § 681.34; or

(ii) In the months of June, July, and August, as specified in § 681.33.

(2) Retain or possess on a fishing vessel any lobster taken in Permit Area 2 which is less than the minimum size specified in § 681.31.

(3) Possess on a fishing vessel any lobster or lobster part taken in Permit Area 2 in a condition where the lobster is not whole and undamaged as specified in § 681.35.

(4) Retain or possess on a fishing vessel, or remove the eggs from, any egg-bearing lobster, as specified in § 681.32.

[48 FR 5562, Feb. 7, 1983, as amended at 48 FR 52925, Nov. 23, 1983; 51 FR 8508, Mar. 12, 1986; 52 FR 9497, Mar. 25, 1987; 52 FR 47575, Dec. 15, 1987; 53 FR 24659, June 29, 1988]

§ 681.8 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 681.9 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

§ 681.10 Observers.

(a) All fishing vessels subject to this part must carry an observer when requested to do so by the Regional Director.

(b) The operator of a fishing vessel subject to this part shall notify the Regional Director of his departure 48 hours before leaving port to fish for lobster in the Management Area. The operator shall provide this notice by contacting NMFS, Western Pacific Program Office, telephone (808) 955-8831, 2570 Dole Street, Honolulu, Hawaii.

[48 FR 5562, Feb. 7, 1983, as amended at 52 FR 47575, Dec. 15, 1987]

Subpart B—Management Measures for Permit Area 1 (the Northwestern Hawaiian Islands)

§ 681.20 General.

The management measures specified in this subpart govern fishing for lobster in the EEZ seaward of the Northwestern Hawaiian Islands (Permit Area 1).

[48 FR 5562, Feb. 7, 1983, as amended at 52 FR 9497, Mar. 25, 1987; 52 FR 47575, Dec. 15, 1987]

§ 681.21 Size restrictions.

Only spiny lobsters with a tail width of 5.0 cm or greater and slipper lobsters with a tail width of 5.6 cm or greater may be retained.

[52 FR 47575, Dec. 15, 1987]

§ 681.22 Reproductive condition restrictions.

A female lobster of any size may not be retained if it is carrying eggs externally. Eggs may not be removed from female lobsters.

[48 FR 5562, Feb. 7, 1983, as amended at 52 FR 47575, Dec. 15, 1987]

§ 681.23 Closed areas (refugia).

(a) All lobster fishing is prohibited within 20 nautical miles of Laysan Island.

(b) All lobster fishing is prohibited within the EEZ landward of the 10 fathom curve as depicted on National Ocean Survey Charts, Numbers 19022, 19019, 19016.

[52 FR 9497, Mar. 25, 1987, as amended at 52 FR 47575, Dec. 15, 1987]

§ 681.24 Gear restrictions.

(a) Lobsters may be taken only with lobster traps or by hand. Lobsters may not be taken by means of poisons, drugs, other chemicals, spears, nets, hook, or explosives.

(b) The smallest opening of an entryway of any lobster trap may not allow any sphere or cylinder greater than 6.5 inches in diameter to pass from outside the trap to inside the trap.

(c) All lobster traps must have a minimum of two escape vent panels meeting the following requirements:

(1) Panels must have at least four circular holes no smaller than 67 millimeters (mm) in diameter with centers at least 82 mm apart.

(2) The lowest part of any opening in an escape vent panel must not be more than 85 mm above the floor of the trap.

(d) It is unlawful to have on board a vessel fishing for or in possession of lobster, any trap that does not meet the requirements of paragraphs (a), (b), and (c) of this section.

[48 FR 5562, Feb. 7, 1983, as amended at 49 FR 408, Jan. 4, 1984; 52 FR 47575, Dec. 15, 1987]

§ 681.25 Landing requirements.

The operator of a fishing vessel that has taken lobsters in the EEZ off the Northwestern Hawaiian Islands shall contact the U.S. Coast Guard, by radio or otherwise, at the 14th District, Honolulu, Hawaii (Telex: 392401); Pacific Area, San Francisco, California (Telex: 330427); or 17th District, Juneau, Alaska (Telex: 45305), at least 24 Hours before landings, and report the port, the approximate date, and time at which the lobsters will be landed.

[48 FR 5562, Feb. 7, 1983, as amended at 52 FR 47575, Dec. 15, 1987]

§ 681.26 Experimental fishing.

(a) *General.* The Secretary may authorize experimental fishing for lobster which would otherwise be prohibited by this part. No experimental fishing may be conducted unless an NMFS scientific observer is aboard the vessel.

(b) *Council review.* Before authorizing experimental fishing, the Secretary will submit to the Western Pacific Fishery Management Council a Copy of the Plan under which the experimental fishing will be conducted, and request the Council's comments.

(c) *Implementation.* After authorization by the Secretary, as demonstrated by the placement of an NMFS scientific observer on a vessel, the vessel may fish in accordance with the plan described in paragraph (b) of this section

[48 FR 5562, Feb. 7, 1983, as amended at 52 FR 47575, Dec. 15, 1987]

§ 681.27 Monk seal protective measures.

(a) *General.* This section establishes a procedure which will be followed if the Regional Director receives a report of a monk seal death that appears to be related to the lobster fishery in Permit Area 1.

(b) *Notification.* Upon receipt of a report of a monk seal death that appears to be related to the lobster fishery, the Regional Director will notify all interested parties of the facts known about the incident. He will also notify them that an investigation is in progress, and that, if the investigation reveals a threat of harm to the monk seal population, protective measures may be implemented.

(c) *Investigation.* The Regional Director will investigate the incident reported and will attempt:

(1) To verify that the incident occurred;—

(2) To determine the extent of the harm to the monk seal population;

(3) To determine the probability of a similar incident recurring;

(4) To determine details of the incident such as:

(i) The number of animals involved,

(ii) The cause of the mortality,

(iii) The age and sex of the dead animals,

(iv) The relationship of the incident to the reproductive cycle, for example, breeding season (March-September), non-breeding season (October-February),

(v) The population estimates or counts of animals at the island where the incident occurred, and

(vi) Any other relevant information;

(5) To discover and evaluate any extenuating circumstances; and

(6) To evaluate any other relevant factors.

The Regional Director will make the results of his investigation available to the interested parties and request their advice and comments.

(d) *Determination of relationship.* The Regional Director will review and evaluate the results of the investigation and any comments received from interested parties. If there is substantial evidence that the death of the monk seal was related to the lobster fishery, the Regional Director will:

(1) Advise the interested parties of his conclusion and the facts upon which it is based; and

(2) Request from the interested parties their advice on the necessity of protective measures and suggestions of appropriate protective measures.

(e) *Determination of response.* The Regional Director will consider all relevant information discovered during the investigation or submitted by interested parties in deciding on the appropriate response. Protective measures may include, but are not limited to, changes in trap design, changes in gear, closures of specific areas, or closures for specific periods of time.

(f) *Action by the Regional Director.* If the Regional Director decides that protective measures are necessary and appropriate, the Regional Director will:

(1) Prepare a document which describes the incident, the protective measures proposed, and the reasons for the protective measures;

(2) Provide it to the interested parties; and

(3) Request their comments.

(g) *Implementation.* (1) If, after completing the steps described in paragraph (f) of this section, the Regional Director still thinks that protective measures are necessary and appropriate, he will recommend the protective measures to the Administrator and provide notice of this recommendation to the Chairman of the Western Pacific Fishery Management Council and the Director of the Division of Aquatic Resources, Department of Land and Natural Resources, State of Hawaii.

(2) If the Administrator concurs with the Regional Director's recommendation, a notice will be published in the FEDERAL REGISTER which includes:

(i) The protective measures;

(ii) The reasons for the protective measures; and

(iii) A description of the incident that triggered the procedure described in this section.

(h) *Notification of "no action"*. If at any point in the process described in this section, the Regional Director or Administrator decides that no further action is required, the interested parties will be notified of this decision.

(i) *Effective dates.* (1) The protective measures will take effect 10 days after the date of publication in the FEDERAL REGISTER.

(2) The protective measures will remain in effect for the shortest of the following time periods:

(i) Until the FMP and this section are amended to respond to the problem;

(ii) Until other action that will respond to the problem is taken under the Endangered Species Act;

(iii) Until the Administrator, following the procedures set forth in paragraph (j) of this section, decides that the protective measures are no longer required and repeals the measures; or

(iv) For the period of time set forth in the FEDERAL REGISTER notice, not to exceed three months. The measures may be renewed for three months after again following procedures in paragraphs (b) through (g) of this section.

(j) *Repeal.* (1) If the Administrator decides that protective measures may no longer be necessary for the protection of the monk seals, the interested parties will be notified of this preliminary decision and the facts upon which it is based. The Administrator will request advice on the proposed repeal of the protective measures.

(2) The Administrator will consider all relevant information obtained by the Regional Director or submitted by interested parties in deciding whether to repeal the protective measures.

(3) If the Administrator decides to repeal the protective measures:

(i) Interested parties will be notified of the decision, and

(ii) The notice of repeal and the reasons for the repeal will be published in the FEDERAL REGISTER.

[48 FR 5562, Feb. 7, 1983, as amended at 52 FR 47575, Dec. 15, 1987]

§ 681.28 Monk seal emergency protective measures.

(a) *Determination of emergency.* If at any time during the process described in § 681.27 the Regional Director determines that an emergency exists involving monk seal mortality related to the lobster fishery and that measures are needed immediately to protect the monk seal population, he will:

(1) Notify the interested parties of this determination and request their immediate advice and comments; and

(2) Forward a recommendation for emergency action and any advice and comments received from interested parties to the Administrator.

(b) *Implementation of emergency provisions.* If the Administrator agrees with the recommendation for emergency action:

(1) He will determine the appropriate emergency protective measures;

(2) A notice of the emergency protective measures will be published in the FEDERAL REGISTER; and

(3) He will notify the interested parties of the emergency protective measures. Holders of permits to fish in Permit Area I will be notified by certified mail. Permit holders that the Regional Director knows are on the fishing grounds also will be notified by radio.

(c) *Effective dates.* (1) Emergency protective measures are effective against a fisherman at 12:01 a.m. local time of the day following the day the fisherman receives actual notice of the measures.

(2) Emergency protective measures are effective for 10 days from the day following the day the first permit holder is notified of the protective measures.

(3) Emergency protective measures may be extended for an additional 10 days if necessary to allow the completion of the procedures set out in § 681.27.

[48 FR 5562, Feb. 7, 1983, as amended at 52 FR 47575, Dec. 15, 1987]

Subpart C—Management Measures for Permit Area 2 (the Main Hawaiian Islands)

§ 681.30 General.

The management measures specified in this subpart govern fishing for lobster in the EEZ seaward of the main Hawaiian Islands (Permit Area 2).

[48 FR 52925, Nov. 23, 1983, as amended at 52 FR 47575, Dec. 15, 1987]

§ 681.31 Size restrictions.

Only spiny lobsters with a carapace length of 8.26 cm or greater may be retained.

[48 FR 52925, Nov. 23, 1983]

§ 681.32 Reproductive condition restrictions.

A female lobster of any size may not be retained if it is carrying eggs externally. Eggs may not be removed from female lobsters.

[48 FR 52925, Nov. 23, 1983, as amended at 52 FR 47575, Dec 15, 1987]

§ 681.33 Closed season.

Spiny lobster fishing is not allowed in Permit Area 2 during the months of June, July, and August.

[48 FR 52925, Nov. 23, 1983]

§ 681.34 Gear restrictions.

Lobsters may be taken only with lobster traps or by hand. Lobsters may not be taken by means of poisons, drugs, other chemicals, spears, nets, hooks, or explosives.

[48 FR 52925, Nov. 23, 1983, as amended at 52 FR 47575, Dec. 15, 1987]

§ 681.35 Lobster condition.

Any lobster with a punctured or mutilated body, or a separated carapace and tail, may not be retained.

[48 FR 52925, Nov. 23, 1983, as amended at 52 FR 47575, Dec. 15, 1987]

PART 683—WESTERN PACIFIC BOTTOMFISH AND SEAMOUNT GROUNDFISH FISHERIES

Subpart A—General Provisions

Sec

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683.28 Native Hawaiian fishing rights. [Reserved]

AUTHORITY: 16 U.S.C. 1801 et seq.

Subpart A—General Provisions

§ 683.1 Purpose and scope.

(a) These regulations implement the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP) prepared by the Western Pacific Regional Fishery Management Council under the Magnuson Act.

(b) Regulations governing fishing for bottomfish and seamount groundfish by fishing vessels other than vessels of the United States are published at 50 CFR Part 611.

[51 FR 27414, July 31, 1986, as amended at 53 FR 24660, June 29, 1988]

§ 683.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Bottomfish means the following species managed under the FMP:

Common name	Local name	Scientific name
Snappers:		
Silver jaw jobfish	lehi (H); palu-gustusilvia (S)	*Aphareus rutilans.*
Gray jobfish	uku (H); asoama (S)	*Aprion virescens.*
Squirrelfish snapper	ehu (H); palu-malau (S)	*Etelis carbunculus.*
Longtail snapper	onaga, ula'T1ula (H); palu-loa (S)	*Etelis coruscans.*
Blue stripe snapper	ta'T1ape (H); savane (S); funai (G)	*Lutjanus kasmira.*
Yellowtail snapper	palu-i 1usama (S); yellowtail kalekale	*Pristipomoides auricilla.*
Pink snapper	opakapaka (H); palu-'T1ena'1ena (S); gadao (G).	*Pristipomoides filamentosus.*
Yelloweye snapper	palusina (S); yelloweye opakapaka	*Pristipomoides flavipinnus.*
Snapper	kalekale (H)	*Pristipomoides sieboldii.*
Snapper	gindai (H,G); palu-sega (S);	*Pristipomoides zonatus.*
Jacks:		
Giant trevally	white ulua (H); tarakito (G); sapo-anae (S)	*Caranx ignobilis.*
Black jack	black ulua (H); tarakito (G); tafauli (S)	*Caranx lugubris.*
Thick lipped trevally	pig ulua (H); butaguchi (H)	*Pseudocaranx dentex.*
Amberjack	kahala (H)	*Seriola dumerili.*
Groupers:		
Blacktip grouper	fausi (S); gadau (G)	*Epinephelus fasciatus.*
Sea bass	hapu' 1upu'u (H)	*Epinephelus quernus.*
Lunartail grouper	papa (S)	*Variola louti.*
Emperor fishes:		
Ambon emperor	filoa-gutumumu (S)	*Lethrinus amboinensis.*
Redgill emperor	filoa-pa'1o'omumu (S); mafuti (G)	*Lethrinus rubrioperculatus.*

Notes: G—Guam; H—Hawaii; S—American Samoa.

Council means the Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1608, Honolulu, HI 96813, 808-523-1368.

Fishery management area means the EEZ off the coasts of Hawaii, American Samoa, and Guam.

Fishing gear:

(a) *Bottom Trawl* means a trawl in which the otter boards or the footrope of the net are in contact with the sea bed.

(b) *Gill net* means a rectangular net with one or more layers of mesh which is set upright in the water.

(c) *Hook-and-line* means one or more hooks attached to one or more lines.

(d) *Set net* means a stationary, buoyed, and anchored gill net.

(e) *Trawl net* means a cone or funnel-shaped net which is towed through the water by one or more vessels.

Fishing trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel lands fish.

Fishing year means the year beginning at 0001 local time on January 1 and ending at 2400 local time on December 31.

Incidental catch or *incidental species* means species caught while fishing for the primary purpose of catching a different species.

Land or *landing* means to begin offloading any fish, to arrive in port with the intention of offloading any fish, or to cause any fish to be offloaded.

Maximum sustainable yield (*MSY*) means an average over a reasonable length of time of the largest catch which can be taken continuously from a stock.

Qualifying landing means a landing that meets a standard required for permit eligibility under § 683.25, as follows:

(a) Initial permit eligibility. (1) A qualifying landing for initial permit eligibility under § 683.25(b) (1) and (5) is a landing that contained bottomfish from the NWHI, regardless of amount, and which was made on or before August 7, 1985; (2) A qualifying landing for 1986 and 1987 under § 683.25(b)(2) is a landing which contained at least 2,500 pounds of bottomfish from the NWHI or a landing of at least 2,500 pounds of fish from the NWHI, of which at least 50 percent by weight was bottomfish;

(b) Permit renewal—a qualifying landing for permit renewal under § 683.25(c) is a landing which contained 2,500 pounds of bottomfish from the NWHI or a landing of at lest 2,500 pounds of fish from the NWHI, of which at least 50 percent by weight was bottomfish.

(c) New access eligibility points—a qualifying landing for eligibility points under § 683.25(e) is any landing of bottomfish from the NWHI, regardless of weight, if made on or before August 7, 1985; or a landing of at least 2,500 pounds of bottomfish lawfully harvested from the NWHI, or a landing of at least 2,500 pounds of fish lawfully harvested from the NWHI, of which at least 50 percent by weight was bottomfish, if made after August 7, 1985.

Regional Director means the Director, Southwest Region National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731, or a designee.

Seamount groundfish means the following species managed by the FMP:

Commn name	Scientific name
Armorhead	Pentaceros richardsoni
Alfonsin	Beryx splendens
Raftfish	Hyperoglyphe japonica

[51 FR 27414, July 31, 1986, as amended at 53 FR 24655, 24660, June 29, 1988; 53 FR 29908, Aug. 9, 1988]

EFFECTIVE DATE NOTE: At 53 FR 29908, Aug. 9, 1988, § 683.2 was amended by adding a definition for "qualifying landing", the permit requirement will go into effect on January 1, 1989.

§ 683.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) This part recognizes that any State law which pertains to vessels registered under the laws of that State while in the fishery management area, and which is consistent with the FMP, including any State landing law, continues in effect with respect to fishing activities regulated under this part.

[51 FR 27414, July 31, 1986, as amended at 53 FR 24655, June 29, 1988]

§ 683.4 Recordkeeping and reporting.

(a) This part recognizes that catch and effort data necessary for implementing the FMP are collected by the State of Hawaii, American Samoa, and Guam under existing State data collection programs. No additional Federal reports are required of fishermen or processors as long as the data collection and reporting systems operated by the State agencies continue to provide the Secretary with statistical information adequate for management.

(b) Permit holders in the Northwestern Hawaiian Islands are required to report any incidental take or fishing interaction with protected species.

[51 FR 27414, July 31, 1986, as amended at 53 FR 24656, June 29, 1988]

§ 683.5 Management subareas.

(a) The fishery management area is divided into five subareas for the regulation of bottomfish and seamount groundfish fishing with the following designations and boundaries:

(1) *Main Hawaiian Islands* means the EEZ of the Hawaiian Islands Archipelago lying to the east of 161°20′ W. longitude.

(2) *Northwestern Hawaiian Islands* means the EEZ of the Hawaiian Islands Archipelago lying to the west of 161°20′ W. longitude. However, for the purpose of regulations issued under this part, Midway Island is treated as part of the Northwestern Hawaiian Islands Subarea.

(i) *Ho'omalu Zone* means that portion of the EEZ around the NWHI west of 165°W longitude.

(ii) *Mau Zone* means that portion of the EEZ around the NWHI between 161°20′ and 165° W. longitude.

(3) *Hancock Seamount* means that portion of the EEZ in the Northwestern Hawaiian Islands west of 180°00′ W. longitude and north of 28°00′ N. latitude.

(4) *Guam* means the EEZ of the Territory of Guam.

(5) *American Samoa* means the EEZ of the Territory of American Samoa.

(b) The inner boundary of the fishery management area is a line coterminous with the seaward boundaries of the State of Hawaii, the Territory of American Samoa, and the Territory of Guam (the "3 mile-limit").

(c) The outer boundary of the fishery management area is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is coterminous with adjacent international maritime boundaries. The outer boundary of the fishery management area north of Guam will extend to those points which are equidistant between Guam and the island of Rota in the Commonwealth of the Northern Mariana Islands.

[51 FR 27414, July 31, 1986, as amended at 53 FR 24660, June 29, 1988; 53 FR 29908, Aug. 9, 1988]

EFFECTIVE DATE NOTE: At 53 FR 29908, Aug. 9, 1988, § 683.5 was amended by adding paragraphs (a)(2)(i) and (a)(2)(ii), the permit requirement will go into effect on January 1, 1989.

§ 683.6 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for bottomfish or seamount groundfish using gear prohibited under § 683.22.

(b) Fish for bottomfish or seamount groundfish in violation of any terms or conditions attached to an experimental fishing permit (EFP) issued under § 683.9.

(c) Violate any other provision of this part, the Magnuson Act, any notice issued under Subpart B of this part, or any other regulation or permit promulgated under the Magnuson Act.

(d) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search conducted in the process of enforcing the Magnuson Act.

(e)—(j) [Reserved]

(k) Fish for bottomfish in the Ho'omalu Zone without a limited access permit issued under § 683.25.

(l) Serve as captain or relief captain on a vessel fishing in the Ho'omalu Zone without first participating in a protected species seminar conducted by NMFS.

(m) Falsify or fail to make and/or file any and all reports of bottomfish landings, containing all data and in the exact manner, required by the applicable State laws and regulations, as specified in § 683.11, provided that the person is required to do so by the applicable State laws and regulations.

(n) Fail to notify the U.S. Coast Guard at least 24 hours prior to making any landing of bottomfish taken in the Ho'omalu Zone, as required by § 683.27.

[51 FR 27414, July 31, 1986, as amended at 53 FR 24659, June 29, 1988; 53 FR 29909, Aug. 9, 1988]

EFFECTIVE DATE NOTE: At 53 FR 29909, Aug. 9, 1988, § 683.6 was amended by adding paragraphs (k) through (n), the permit requirement will go into effect on January 1, 1989.

§ 683.7 Facilitation of enforcement.

See § 620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§ 683.8 Penalties.

See § 620.9 of this chapter.

[53 FR 24656, June 29, 1988]

§ 683.9 Experimental Fishing Permit (EFP).

(a) *General.* The Secretary may authorize, for limited experimental purposes, the direct or incidental harvest of bottomfish or seamount groundfish managed by the FMP which would otherwise be prohibited by this part. No experimental fishing may be conducted unless authorized by an EFP issued by the Secretary in accordance with the criteria and procedures specified in this section. EFPs will be issued without charge.

(b) *Application.* An applicant for an EFP must submit to the Regional Director at least 60 days before the desired effective date of the EFP a written application including, but not limited to, the following information:

(1) The date of the application;

(2) The applicant's name, mailing address, and telephone number;

(3) A statement of the purposes and goals of the experiment for which an EFP is needed, including a general description of the arrangements for disposition of all species harvested under the EFP;

(4) A statement of whether the proposed experimental fishing has broader significance than the applicant's individual goals;

(5) For each vessel to be covered by the EFP—

(i) Vessel name;

(ii) Name, address, and telephone number of owner and master;

(iii) U.S. Coast Guard documentation, State license, or registration number;

(iv) Home port;

(v) Length of vessel;

(vi) Net tonnage; and

(vii) Gross tonnage.

(6) A description of the species (directed and incidental) to be harvested under the EFP and the amount(s) of such harvest necessary to conduct the experiment;

(7) For each vessel covered by the EFP, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used; and

(8) The signature of the applicant.

(c) The Secretary may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until completed by the applicant.

(d) *Issuance.* (1) If an application contains all of the required information, the Secretary will publish a notice of receipt of the application in the FEDERAL REGISTER with a brief description of the proposal, and will give interested persons an opportunity to comment. The Secretary will also forward copies of the application to the Western Pacific Fishery Management Council, the U.S. Coast Guard, and the fishery management agency of the affected State, accompanied by the following information:

(i) The current utilization of domestic annual harvesting and processing capacity (including existing experimental harvesting, if any) of the directed and incidental species for which an EFP is being requested;

(ii) A citation of the regulation or regulations which, without the EFP, would prohibit the proposed activity; and

(iii) Biological information relevant to the proposal.

(2) At a Western Pacific Fishery Management Council meeting following receipt of a complete application, the Secretary will consult with the Council and the Director of the affected State fishery management agency concerning the permit application. The applicant will be notified in advance of the meeting at which the application will be considered and invited to appear in support of the application if the applicant desires.

(3) Within 5 working days after the consultation in paragraph (c)(2) of this section, or as soon as practicable thereafter, the Secretary will notify the applicant in writing of the decision to grant or deny the EFP, and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(i) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application; or

(ii) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect any species of fish in a significant way; or

(iii) Issuance of the EFP would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose; or

(iv) Activities to be conducted under the EFP would be inconsistent with the intent of this section or the management objectives of the FMP; or

(v) The applicant has failed to demonstrate a valid justification for the permit; or

(vi) The activity proposed under the EFP would create a significant enforcement problem.

(4) The decision of the Secretary to grant or deny an EFP is the final action of the Department of Commerce. If the permit is granted, the Secretary will publish a notice in the FEDERAL REGISTER describing the experimental fishing to be conducted under the EFP. The Secretary may attach terms and conditions to the EFP consistent with the purpose of the experiment including, but not limited to, the following:

(i) The maximum amount of each species which can be harvested and landed during the term of the EFP, including trip limits, where appropriate;

(ii) The number, sizes, names, and identification numbers of the vessels authorized to conduct fishing activities under the EFP;

(iii) The times and places where experimental fishing may be conducted;

(iv) The type, size, and amount of gear which may be used by each vessel operated under the EFP;

(v) The condition that observers be carried aboard vessels operated under an EFP;

(vi) Data reporting requirements; and

(vii) Such other conditions as may be necessary to assure compliance with the purposes of the EFP consistent with the objectives of the FMP.

(e) *Duration.* Unless otherwise specified in the EFP or a superseding notice or regulation, and EFP is effective for no longer than one year unless revoked, suspended, or modified. EFP's may be renewed following the application procedures in this section.

(f) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(g) *Transfer.* EFPs issued under this part are not transferable or assignable. EFPs are valid only for the vessels for which they are issued.

(h) *Inspection.* EFPs issued under this part must be carried aboard the vessels for which they are issued. EFPs must be presented for inspection upon request of any authorized officer.

(i) *Sanctions.* Failure of the holder of an EFP to comply with the terms and conditions of an EFP, a notice issued under Subpart B of this part, any other applicable provision of this part, the Magnuson Act, or any other regulation promulgated thereunder, will be grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP will be governed by 15 CFR Part 904, Subpart D.

[51 FR 27414, July 31, 1986; 51 FR 30367, Aug. 26, 1986; 51 FR 32215, Sept. 10, 1986]

§ 683.10 Appeals of administrative action.

(a) Except as provided in Subpart D of 15 CFR Part 904, any applicant for a permit or permit holder may appeal the granting, denial, conditioning, or suspension of their permit or a permit affecting their interests to the Assistant Administrator for Fisheries, NOAA. In order to be considered by the Assistant Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefor, and must be submitted within 30 days of the action(s) by the Regional Director. The appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Assistant Administrator will notify the permit applicant, or permit holder as appropriate, and will request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Assistant Administrator will decide the appeal in accordance with the criteria set forth in 50 CFR Part 683 and the amendment to the FMP, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in paragraph (c) of this section, and such other considerations as deemed appropriate. The Assistant Administrator will notify all interested persons of the decision, and the reasons therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(c) If a hearing is requested or if the Assistant Administrator determines that one is appropriate, the Assistant Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing in the FEDERAL REGISTER. Such a hearing shall normally be held no later than 30 days following publication of the notice in the FEDERAL REGISTER unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different), and, at the discretion of the hearing officer, other interested persons, may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Assistant Administrator.

(d) The Assistant Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Assistant Administrator will notify interested persons of the decision, and the reason(s) therefor, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Assistant Administrator's action shall constitute final action for the agency for the purposes of the Administrative Procedure Act.

(e) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Assistant Administrator for good cause, either upon his or her own motion or upon written request from the appellant or applicant stating the reason(s) therefor.

[53 FR 29909, Aug. 9, 1988]

Effective Date Note: At 53 FR 29909, Aug. 9, 1988, § 683.10 was added, the permit requirement will go into effect on January 1, 1989.

§ 683.11 Reports.

Any person who has a Federal permit to fish for bottomfish or seamount groundfish in the NWHI, and who is required to do so by the applicable State laws and regulations, shall make and/or file any and all reports of bottomfish and seamount groundfish landings, containing all data and in the exact manner, required by the applicable State laws and regulations.

[53 FR 29909, Aug. 9, 1988]

Effective Date Note: At 53 FR 29909, Aug. 9, 1988, § 683.11 was added, the permit requirement will go into effect on January 1, 1989.

Subpart B—Management Measures

§ 683.21 Permit requirements for the Northwestern Hawaiian Islands.

(a) *Permit areas.* (1) The owner of any vessel being used to fish for bottomfish in the Mau Zone must have a permit issued under this section for that vessel.

(2) The owner of any vessel fishing for bottomfish in the Ho'omalu Zone must have a permit issued under § 683.25 for that vessel.

(3) The owner of any vessel fishing for seamount groundfish in a given fishery management area must have a permit issued under this section for that vessel.

(4) No vessel may be covered by a permit to harvest groundfish in the Ho'omalu Zone and the Mau Zone at the same time.

(b) *Applications.* (1) An application for a permit under this section must be submitted to the Regional Director by the vessel owner or operator at least 15 days before the date on which the applicant desires to have the permit made effective.

(2) Each application must be submitted on an appropriate form which may be obtained from the Regional Director. Each application must be signed by the vessel owner or operator and contain the following information:

(i) The applicant's name;

(ii) The owner's name, mailing address, and telephone number,

(iii) The operator's name, mailing address, and telephone number;

(iv) The name of the vessel;

(v) The vessel's official number;

(vi) The radio call sign of the vessel;

(vii) The home port of the vessel;

(viii) Gross registered tons of the vessel;

(ix) Registered length of the vessel;

(x) Beam of the vessel;

(xi) Fuel capacity of the vessel;

(xii) Average cruising speed of the vessel;

(xiii) Maximum range of the vessel;

(xiv) Horsepower of the vessel;

(xv) Purchase price of the vessel;

(xvi) Purchase date of the vessel;

(xvii) Age of the vessel;

(xviii) The vessel's fish hold capacity;

(xix) Type of refrigeration and capacity;

(xx) Type and number of fishing gear;

(xxi) Whether the application is for a new permit or a renewal;

(xxii) Number and expiration date of any prior permit for the vessel issued under this part.

(c) *Fees.* No fee is required for a permit issued under this section.

(d) *Change in application information.* Any change in the information specified in paragraph (b) of this section must be reported to the Regional Director ten days before the effective date of the change.

(e) *Issuance.* (1) Within 15 days after receipt of a properly completed application, the Regional Director will determine whether to issue a permit.

(2) If an incomplete or improperly completed permit application is filed, the Regional Director will notify the applicant in writing of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(3) Permits issued under this section will be accompanied by an informational package advising the permit holder of the applicable laws and regulations regarding threatened and endangered species in the NWHI. Permit holders are required to report any incidental take or fisheries interaction with protected species on a form provided for that purpose.

(f) *Expiration.* Permits issued under this section expire on December 31 of the year covered by the permit.

(g) *Renewal.* An application for renewal of a permit must be submitted to the Regional Director in the same manner as described in paragraph (b) of this section.

(h) *Alteration.* Any permit that has been substantially altered, erased, or mutilated is invalid.

(i) *Replacement.* Permits may be issued to replace lost or mutilated permits. An application for a replacement permit is not considered a new application.

(j) *Transfer.* Permits issued under this section are not transferable or assignable to other persons. A permit is valid only for the vessel for which it is issued.

(k) *Display.* Any permit issued under this section must be on board the vessel at all times while the vessel is still fishing for bottomfish or seamount groundfish in the NWHI. Any permit issued under this section must be displayed for inspection upon request of any Authorized Officer.

(l) *Sanctions.* Procedures governing permit sanctions and denials are found at 15 CFR Part 904, Subpart D.

[51 FR 27414, July 31, 1986; 51 FR 30367, Aug. 26, 1986, as amended at 53 FR 29909, Aug. 9, 1988]

EFFECTIVE DATE NOTE: At 53 FR 29909, Aug. 9, 1988, § 683.21 was amended by revising paragraphs (a) and (f), the permit requirement will go into effect on January 1, 1989. For the convenience of the user the superseded text appears as follows.

§ 683.21 Permit requirement for the Northwestern Hawaiian Islands (NWHI).

(a) *General.* Any vessel of the United States engaged in fishing for bottomfish or seamount groundfish in the NWHI must have a permit issued under this section.

* * * * *

(f) *Expiration.* Permits issued under this section expire on June 30 following issuance of the permit.

* * * * *

§ 683.22 Gear restrictions.

(a) *Bottom trawls and bottom set gill nets.* Fishing for bottomfish and seamount groundfish with bottom trawls and bottom set gill nets is prohibited.

(b) *Possession of gear.* Possession of a bottom trawl and bottom set gill net by any vessel having a permit under § 683.21 or otherwise established to be fishing for bottomfish or seamount groundfish in the management subareas is prohibited.

(c) *Poisons and explosives.* The possession or use of any poisons, explosives, or intoxicating substances for the purpose of harvesting bottomfish and seamount groundfish is prohibited.

[51 FR 27414, July 31, 1986]

§ 683.23 Fishing moratorium on Hancock Seamounts.

Fishing for bottomfish and seamount groundfish on the Hancock Seamount is prohibited until six years after the effective date of these regulations.

[51 FR 27414, July 31, 1986]

§ 683.24 Framework for regulatory adjustments.

(a) *Annual reports.* By June 30 of each year a Council-appointed bottomfish monitoring team will prepare an annual report on the fishery by area covering the following topics:

(1) Fishery performance; data;

(2) Summary of recent research and survey results;

(3) Habitat conditions and recent alterations;

(4) Enforcement activities and problems;

(5) Administrative actions (e.g., data collection and reporting, permits);

(6) State and Territorial management actions;

(7) Assessment of need for Council action (including biological, economic, social, enforcement, administrative, and State/Federal needs, problems, and trends). Indications of potential problems warranting further investigation may be signaled by the following indicator criteria:

(i) Mean size of the catch of any species in any area is a pre-reproductive size;

(ii) Ratio of fishing mortality to natural mortality for any species;

(iii) Harvest capacity of the existing fleet and/or annual landings exceed best estimate of MSY in any area;

(iv) Significant decline (50 percent or more) in bottomfish catch per unit of effort from baseline levels;

(v) Substantial decline in ex-vessel revenue relative to baseline levels;

(vi) Significant shift in the relative proportions of gear in any one area;

(vii) Significant change in the frozen/fresh components of the bottomfish catch;

(viii) Entry/exit of fishermen in any area;

(ix) Per-trip costs for bottomfishing exceed per-trip revenues for a significant percentage of trips;

(x) Significant decline or increase in total bottomfish landings in any area;

(xi) Change in species composition of the bottomfish catch in any area;

(xii) Research results;

(xiii) Habitat degradation or environmental problems;

(xiv) Reported interactions between bottomfishing operations and protected species in the NWHI.

(8) Recommendations for Council action; and

(9) Estimated impacts of recommended action.

(b) *Recommendation of management action.* (1) The team may present management recommendations to the Council at any time. Recommendations may cover actions suggested for Federal regulations, State/territorial action, enforcement or administrative elements, and research and data collection. Recommendations will include an assessment of urgency and the effects of not taking action.

(2) The Council will evaluate the team's reports and recommendations, and the indicators of concern. The Council will assess the need for one or more of the following types of management action:

(i) Catch limits;

(ii) Size limits;

(iii) Closures;

(iv) Effort limitations;

(v) Access limitations; or

(vi) Other measures.

(3) The Council may recommend management action by either the State/territorial governments or by Federal regulation.

(c) *Federal management action.* (1) If the Council believes that management action should be considered, it will make specific recommendations to the Regional Director after taking the following steps:

(i) Request and consider the views of its Scientific and Statistical Committee and bottomfish advisory panel; and

(ii) Obtain public comments at a public hearing.

(2) The Regional Director will consider the Council's recommendation and accompanying data, and if he concurs with the Council's recommendation will propose regulations to carry out the action. If the Regional Director rejects the Council's proposed action, a written explanation for the denial will be provided to the Council within two weeks of the decision.

(3) The Council may appeal denial by writing to the Assistant Administrator for Fisheries, who must respond in writing within 30 days.

(4) The Regional Director and the Assistant Administrator for Fisheries will make their decisions in accord with the Magnuson Act, other applicable law, and the FMP.

(5) To minimize conflicts between the Federal and State management

systems, the Council will use the procedures in this subsection to respond to State/territorial management actions. Council consideration of action would normally begin with a representative of the State or territorial government bringing a potential or actual management conflict or need to the Council's attention.

(d) *Access limitation procedures.* (1) Access limitation may be adopted only for the NWHI, American Samoa, and Guam.

(2) If access limitation is proposed for adoption or subsequent modification through the process described in this subsection, the following requirements must be met:

(i) The bottomfish monitoring team must consider and report to the Council on present participation in the fishery; historical fishing practices in, and dependence on, the fishery; economics of the fishery; capability of fishing vessels used in the fishery to engage in other fisheries; cultural and social framework relevant to the fishery; and any other relevant considerations;

(ii) Public hearings must be held specifically addressing the limited access proposals;

(iii) A specific advisory subpanel of persons experienced in the fishing industry will be created to advise the Council and the Regional Director on administrative decisions; and

(iv) Council's recommendation to the Regional Director must be approved by a two-thirds majority of the voting members.

(3) If prior participation in the fishery is used as a factor in any access limitation system recommended by the Council, August 7, 1985, is the date selected by the Council as the date to be used for the NWHI and May 30, 1986, for American Samoa and Guam.

[51 FR 27414, July 31, 1986, as amended at 52 FR 38103, Oct. 14, 1987]

§ 683.25 Limited access management program.

(a) *Limited access permits*—General requirements.

(1) The owner of any vessel engaged in fishing for bottomfish in the Ho'omalu Zone must have a permit issued under this section.

(2) Permits issued under this section shall expire on December 31 of the year covered by the permit.

(3) Each application for a permit must be submitted to the Regional Director by the vessel owner at least 30 days before the date on which the applicant wants the permit to be effective.

(4) Each applicant must be submitted on the form used to apply for a permit under § 683.21(b) and a supplementary information sheet to be provided by the Regional Director. Each application must be signed by the vessel owner and must contain, in addition to the information listed in § 683.21(b)(2), the following information:

(i) The qualification criterion that the applicant believes he or she meets for issuance of a limited access permit; and

(ii) Copies of landings receipts or other documentation, with a certification from a State or Federal agency that this information is accurate, to demonstrate participation in the NWHI bottomfish fishery; or

(iii) Notarized copies of loan documents or other documents that would demonstrate financial commitments on or before August 7, 1985, to enter the NWHI bottomfish fishery; or

(iv) Written evidence indicating that an offer was made to purchase a vessel or that a vessel was under construction, on or before August 7, 1985, and that the vessel was to be used in the NWHI bottomfish fishery.

(v) If the application is filed by a partnership or corporation, the application must identify the names of the owners and their respective percentage of ownership of the partnership or corporation.

(5) *Protected species seminar.* Each designated captain and relief captain must participate in a seminar conducted by NMFS to ensure familiarity with protected species laws and regulations applicable to the NWHI and the species those laws and regulations are designed to protect.

(6) *Sale or transfer of permits to new owners.* (i) A vessel permit may not be sold or otherwise transferred to a new owner.

(ii) A permit or permits may be held by a partnership or corporation. If 50 percent or more of the ownership of the vessel passes to persons other than those listed in the original application, the permit will lapse and must be surrendered to the Regional Director.

(7) *Transfer of permits to new vessels.*

(i) An owner of a permitted vessel may, without limitation, transfer his permit to another vessel owned by him, provided that the replacement vessel does not exceed 60 feet in length and that the replacement vessel is put into service within 12 months after the owner declares to the Regional Director the intent to make the transfer of the permit.

(ii) An owner of a permitted vessel may apply to the Regional Director for approval to use the permit for a replacement vessel greater than 60 feet in length. The Regional Director may allow this change upon determining, after consultation with the Council and considering the objectives of the limited access program, that the replacement vessel has equal catching power as the original vessel, or that the replacement vessel has catching power that is comparable to the rest of the vessels holding permits for the fishery, and that the change is not inconsistent with the objectives of the program.

(iii) The Regional Director shall consider vessel length, range, hold capacity, gear limitations, and other appropriate factors in making determinations of catching power equivalency and comparability of the catching power of vessels in the fishery.

(b) *Supplementary requirements for initial permits.* An application for an initial permit under this paragraph must be filed within 5 years of the effective date of this program. A permit for a vessel to be used for fishing for bottomfish in the Ho'omalu Zone may be issued to:

(1) Any owner who can document that a vessel owned by him made one or more qualifying landings of bottomfish from the NWHI on or before August 7, 1985.

(2) Any owner of two or more vessels which qualify under paragraph (b)(1) of this section may obtain a permit for each of such vessels which also made at least one qualifying landing of bottomfish in 1986 and 1987.

(3) Any person who can document that on or before August 7, 1985, he or she had incurred substantial expenditures for or had received written approval of a loan to purchase or construct a vessel to be used in the NWHI bottomfish fishery.

(4) Any person who can document that on or before August 7, 1985, he or she made an offer to purchase a vessel for the NWHI bottomfish fishery or had such a vessel under construction.

(5) Any person who can document that he or she was captain of a vessel that made at least one qualifying landing of bottomfish the NWHI on or before August 7, 1985, and who becomes an owner or 50% or more interest in a vessel within 5 years of the effective date of this program.

(c) *Supplementary requirements for permit renewal.* (1) A permit will be eligible for renewal if the vessel covered by the permit makes three or more qualifying landings during the permit year.

(2) The owner of a permitted vessel that did not make three or more qualifying landings of bottomfish in a year may apply to the Regional Director for waiver of the landing requirement. If the Regional Director finds that failure to make three landings was due to circumstances beyond the owner's control, he may renew the permit. A waiver may not be granted if the failure to make three landings was due to general economic conditions or market conditions such that the vessel operations would not be profitable.

(d) *Supplementary requirements for new entry permits.* The Regional Director may issue new vessel permits under this part when the Regional Director has determined, in consultation with the Council, that bottomfish stocks in the Ho'omalu Zone are able to support additional fishing effort. This shall be established by determining that the total estimated annual revenue to the fleet exceeds the total estimated annual fixed and variable costs to the fleet in the Ho'omalu Zone by an amount at least equal to the average cost of a vessel year. This determination shall be made and published annually in association with the annual report required under § 683.24 of this part.

(e) *Eligibility.* When the Regional Director has determined that new permits may be issued, they shall be issued to applicants based upon eligibility determined as follows:

(1) *Point System.* (i) Two points shall be assigned for each year in which the applicant was owner or captain of a vessel which made three or more qualifying landings of bottomfish from the NWHI.

(ii) One point shall be assigned for each year in which the applicant was owner or captain of a vessel that landed at least 6,000 pounds of bottomfish from the main Hawaiian Islands.

(iii) Points will be assigned only under paragraph (e)(1)(i) or (e)(1)(ii) of this section for any one year.

(iv) Points will be assigned for every year for which the requisite landings can be documented.

(2) An applicant must own at least a 25 percent share in the vessel that the permit would cover, and only one permit will be assigned to any vessel.

(3) New permits shall be awarded to applicants in descending order, starting with the applicant with the largest number of points. If two or more persons have an equal number of points, and there are insufficient new permits for all such applicants, the new permits shall be awarded by the Regional Director through a lottery.

(4) Notwithstanding paragraph (e)(3) of this section, a person who originally qualifies for and obtains a permit under § 683.25(a) and who voluntarily surrenders that permit to the Regional Director within the first 5 years of this program will have priority over applicants under the point scale system for a new permit under this section. If two or more persons qualify under this provision, the person surrendering a permit at the earliest date will have first priority. If two or more such person are equally qualified under the date of surrender criterion, the permit shall be awarded by the Regional Directory by a lottery. A permit holder may qualify for this provision only one time.

(5) The Regional Director shall place a notice in the FEDERAL REGISTER and shall use other means to notify prospective applicants of the opportunity to file applications for new permits under this program.

[53 FR 29909, Aug. 9, 1988]

EFFECTIVE DATE NOTE: At 53 FR 29909, Aug. 9, 1988, § 683.25 was added, the permit requirement will go into effect on January 1, 1989.

§ 683.26 Scientific research.

Nothing in this part is intended to inhibit or prevent any scientific research which is conducted in the fishery management area by a scientific research vessel. The Secretary will acknowledge notification of *bona fide* scientific research involving bottomfish and seamount groundfish and conducted by a scientific research vessel by issuing to the operator or master of that vessel a letter of acknowledgment, containing information on the purpose and scope (locations and schedules) of the activities. The Secretary will transmit copies of such letters to the Council and to State and Federal administrative and enforcement agencies to ensure that all concerned parties are aware of the research activities.

[51 FR 27414, July 31, 1986. Redesignated at 53 FR 29909, Aug. 9, 1988]

§ 683.27 Notification of landings.

The operator of a fishing vessel that has taken bottomfish in the Ho'omalu Zone must contact the U.S. Coast Guard, by radio or otherwise, at the 14th District, Honolulu, Hawaii (Telex: 392401); Pacific Area, San Francisco, California (Telex: 330427); or 17th District, Juneau, Alaska (Telex: 45305), at lease 24 hours before landing, and report the port and the approximate date and time at which the bottomfish will be landed.

[53 FR 29911, Aug. 9, 1988]

EFFECTIVE DATE NOTE: At 53 FR 29911, Aug. 9, 1988, § 683.27 was added, the permit requirement will go into effect on January 1, 1989.

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§ 683.28 Native Hawaiian fishing rights. [Reserved]

[53 FR 29911, Aug. 9, 1988]

PART 685—PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

Subpart A—General Provisions

Sec.

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Subpart B—Management Measures

685.21 Prohibition on drift gill netting.
685.22 Annual report.
685.23 Five-year review.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 52 FR 5987, Feb. 27, 1987, unless otherwise noted.

Subpart A—General Provisions

§ 685.1 Purpose and scope.

(a) The regulations in this part govern fishing for billfish and associated species by fishing vessels of the United States in the exclusive economic zone (EEZ) off the coasts of Hawaii, American Samoa, Guam, and the U.S. possessions.

(b) Regulations governing fishing for billfish and associated species by fishing vessels other than vessels of the United States are published at 50 CFR Part 611.

(c) These regulations implement the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP) developed by the Western Pacific Regional Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act).

§ 685.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Associated species refers to the following species managed by the FMP:

(a) *Mahimahi* means "dolphin fish" (*Coryphaena hippurus* and *Coryphaena equisetis*);

(b) *Oceanic sharks* means sharks of the families Carcharhinidae, Alopiidae, Sphyrnidae, and Lamnidae; and

(c) *Wahoo* means fish of the species *Acanthocybium solanderi*.

Billfish means broadbill swordfish (*Xiphias gladius*), blue marlin (*Makaira nigricans*), black marlin (*Makaira indica*), striped marlin (*Tetrapturus audax*), sailfish (*Istiphorus platypterus*), and shortbill spearfish (*Tetrapturus angustirostris*).

Drift gill net means a floating rectangular net with one or more layers of mesh which is set vertically in the water.

Fishery management area means the fishery conservation zone off the coasts of Hawaii, American Samoa, Guam, and U.S. possessions in the western Pacific. The outer boundary of the fishery management area north of Guam extends to those points which are equidistant between Guam and the island of Rota in the Commonwealth of the Northern Mariana Islands. This definition does not include the EEZ off the coasts of the Commonwealth of the Northern Mariana Islands.

Land or *landing* means to begin offloading any fish, to arrive in port with the intention of offloading any fish, or to cause any fish to be offloaded.

Maximum sustainable yield (MSY) means an average over a reasonable length of time of the largest catch which can be taken continuously from a stock.

Regional Director means the Southwest Regional Director, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731, or a designee.

[52 FR 5987, Feb. 27, 1987; 52 FR 32015, Aug. 25, 1987, as amended at 53 FR 24655, June 29, 1988]

§ 685.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) This part recognizes that any State law which pertains to vessels registered under the laws of that State while in the fishery management area, and which is consistent with the FMP including any State landing law, will continue in effect with respect to fishing activities regulated under this part.

[52 FR 5987, Feb. 27, 1987, as amended at 53 FR 24656, June 29, 1988]

§685.4 Recordkeeping and reporting.

This part recognizes that catch and effort date necessary for implementing the FMP are collected by the State of Hawaii, American Samoa, and Guam under existing State data collection programs. No additional Federal reports are required of fishermen or processors as long as the data collection and reporting systems operated by the State agencies continue to provide the Secretary with statistical information adequate for management.

[52 FR 5987, Feb. 27, 1987, as amended at 53 FR 24656, June 29, 1988]

§685.5 Prohibitions.

In addition to the general prohibitions specified in §620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for billfish or associated species in violation of any terms or conditions attached to an experimental fishing permit (EFP) issued under §685.8.

(b) Fish for billfish or associated species using gear prohibited under §685.21 or not permitted by an EFP issued under §685.8.

(c) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search conducted in the process of enforcing the Magnuson Act.

[52 FR 5987, Feb. 27, 1987, as amended at 53 FR 24659, June 29, 1988]

§685.6 Facilitation of enforcement.

See §620.8 of this chapter.

[53 FR 24656, June 29, 1988]

§685.7 Penalties.

See §620.9 of this chapter.

[53 FR 24656, June 29, 1988]

§685.8 Experimental fishing permits (EFPs).

(a) *General.* The Secretary may authorize, for limited experimental purposes, the direct or incidental harvest of billfish or associated species managed by the FMP which would otherwise be prohibited by this part. No experimental fishing may be conducted unless authorized by an EFP issued by the Secretary in accordance with the criteria and procedures specified in this section. EFPs will be issued without charge.

(b) *Application.* An applicant for an EFP must submit to the Regional Director at least 60 days before the desired effective date of the EFP a written application including, but not limited to, the following information:

(1) The date of the application;

(2) The applicant's name, mailing address, and telephone number;

(3) A statement of the purposes and goals of the experiment for which an EFP is needed, including a general description of the arrangements for disposition of all species harvested under the EFP;

(4) A statement of whether the proposed experimental fishing has broader significance than the applicant's individual goals;

(5) For each vessel to be covered by the EFP:

(i) Vessel name;

(ii) Name, address, and telephone number of owner and master;

(iii) U.S. Coast Guard documentation, State license, or registration number;

(iv) Home port;

(v) Length of vessel;

(vi) Net tonnage; and

(vii) Gross tonnage.

(6) A description of the species (directed and incidental) to be harvested under the EFP and the amounts of such harvest necessary to conduct the experiment;

(7) For each vessel covered by the EFP, the approximate times and places fishing will take place, and the type, size, and amount of gear to be used; and

(8) The signature of the applicant.

(c) The Secretary may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected in writing.

(d) *Issuance.* (1) If an application contains all of the required information, the Secretary will publish a notice of receipt of the application in the FEDERAL REGISTER with a brief descripton of the proposal, and will give interested persons an opportunity to comment. The Secretary will also forward copies of the application to the Western Pacific Fishery Management Council, the U.S. Coast Guard, and the fishery management agency of the affected State, accompanied by the following information:

(i) The current utilization of domestic annual harvesting and processing capacity (including existing experimental harvesting, if any) of the directed and incidental species for which an EFP is being requested;

(ii) A citation of the regulation or regulations which, without the EFP, would prohibit the proposed activity; and

(iii) Biological information relevant to the proposal.

(2) At a Western Pacific Fishery Management Council meeting following receipt of a complete application, the Secretary will consult with the Council and the Director of the affected State fishery management agency concerning the permit application. The applicant will be notified in advance of the meeting at which the application will be considered, and invited to appear in support of the application if the applicant desires.

(3) Within 5 working days after the consultation in paragraph (d)(2) of this section, or as soon as practicable thereafter, the Secretary will notify the applicant in writing of the decision to grant or deny the EFP, and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(i) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application;

(ii) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect any species of fish in a significant way;

(iii) Issuance of the EFP would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose;

(iv) Activities to be conducted under the EFP would be inconsistent with the intent of this section or the management objectives of the FMP;

(v) The applicant has failed to demonstrate a valid justification for the permit; or

(vi) The activity proposed under the EFP would create a significant enforcement problem.

(4) The decision of the Secretary to grant or deny an EFP is final and unappealable. If the permit is granted, the Secretary will publish a notice in the FEDERAL REGISTER describing the experimental fishing to be conducted under the EFP. The Secretary may attach terms and conditions to the EFP consistent with the purpose of the experiment including, but not limited to

(i) The maximum amount of each species which can be harvested and landed during the term of the EFP, including trip limits, where appropriate;

(ii) The number, sizes, names, and identification numbers of the vessels authorized to conduct fishing activities under the EFP;

(iii) The times and places where experimental fishing may be conducted;

(iv) The type, size, and amount of gear which may be used by each vessel operated under the EFP;

(v) The condition that observers be carried aboard vessels operating under an EFP;

(vi) Data reporting requirements; and

(vii) Such other conditions as may be necessary to assure compliance with the purposes of the EFP consistent with the objectives of the FMP.

(e) *Duration.* Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is effective for no longer than one year unless revoked, suspended, or modified. EFPs may be renewed following the application procedures in this section.

(f) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(g) *Transfer.* EFPs issued under this part are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.

(h) *Inspection.* Any EFP issued under this part must be carried aboard the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(i) *Sanctions.* Failure of the holder of an EFP to comply with the terms and conditions of an EFP, the provisions of Subpart B of this part, any other applicable provision of this part, the Magnuson Act, or any other regulation promulgated thereunder, is grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP will be governed by 15 CFR Part 904 Subpart D. Other sanctions available under the statute will be applicable.

(j) *Protected species.* Vessels fishing under an EFP are required to report any incidental take or fisheries interaction with protected species on a form provided for that purpose. Reports must be submitted to the Regional Director within 3 days of arriving in port.

Subpart B—Management Measures

§ 685.21 Prohibition on drift gill netting.

Fishing with drift gill nets in the fishery management area is prohibited, except where authorized by an experimental fishing permit issued under § 685.8 of this part.

§ 685.22 Annual report.

By June 30 of each year, a plan monitoring team appointed by the Council will prepare an annual report on the domestic and foreign fisheries for billfish and associated species in the management area.

§ 685.23 Five-year review.

Within five years of the effective date of this FMP, the Council, in cooperation with the NMFS and State and Territorial agencies, will conduct a full review of the FMP. The review will assess the effectiveness of the FMP in meeting with the Council's objectives and the need for changes in any management measures, including adjustments in area closure to foreign longline fishing and adding data collection or reporting requirements for the domestic fisheries which take billfish and associated species.

FINDING AIDS

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Table of OMB Control Numbers

The OMB control numbers for Title 50, Chapters II and VI, were consolidated into § 204.1 at 52 FR 36780, Oct. 1, 1987. That section is reprinted below for the convenience of the user.

PART 204—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

§ 204.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This part collects and displays control numbers assigned to information collection requirements of the National Marine Fisheries Service by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act (PRA) of 1980. This part fulfills the requirements of section 3507(f) of the PRA, which requires that agencies display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) *Display.*

50 CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648—)
§ 215.12	-0084 and -0085
§ 215.13	-0084 and -0085
§ 216.24 (b) (c)	-0083
§ 216.24(d)	-0085
§ 216.24(e)	-0040
§ 216.31	-0084 and -0085
§ 216.33	-0084 and -0085
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§ 222.11-8	-0079
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§ 222.23	-0084 and -0085
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§ 250.14	-0133
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§ 255.4	-0012 [1]
§ 259.30	-0090
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§ 680.4	-0097

50 CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648—)
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§ 681.4	-0017
§ 681.5(a)	-0016
§ 681.5(c)	-0013

[1] Pending.

(Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982))

[50 FR 46068, Nov. 6, 1985, as amended at 52 FR 36780, Oct. 1, 1987; 52 FR 38233, Oct. 15, 1987; 53 FR 24644, June 29, 1988]

List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the FEDERAL REGISTER since January 1, 1976, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

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